7–31–02
Vol. 67 No. 147
Pages 49557–49854

Wednesday
July 31, 2002

Federal Register

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

How To Cite This Publication: Use the volume number and the page number. Example: 67 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:	
Paper or fiche	**202–523–5243**
Assistance with Federal agency subscriptions	**202–523–5243**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register

Vol. 67, No. 147

Wednesday, July 31, 2002

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register

Vol. 67, No. 147

Wednesday, July 31, 2002

Presidential Documents

Title 3—

The President

Proclamation 7580 of July 26, 2002

Parents' Day, 2002

By the President of the United States of America

A Proclamation

Parenthood is a profound blessing, bringing with it responsibilities that are both challenging and rewarding. The care, dedication, and attention of parents are critical to their children's success. As they teach, guide, and nurture, parents help their children to realize their potential and achieve their dreams. Parents also play a critical role in shaping their children's character by sharing important life-lessons and values and showing them how to love and care for others.

As we face the challenges of a new era, families remain the foundation of our civil society; and parents are the corner stone of strong families. This important responsibility often presents difficult problems and trying circumstances as parents balance competing demands such as making a living, raising their children, and participating in their communities.

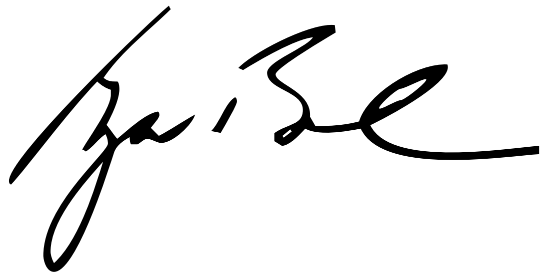
Our Nation has made great progress in recognizing the importance of effective parenting, but there is still much to do. My Administration is committed to promoting a healthier society by helping parents build stronger families. Many studies have shown that children do better in two-parent households where the parents are married; and as part of our plan to promote the well-being of children, I have committed significant resources to programs that encourage healthy and stable marriages. While no law can ensure that people love one another, we can support initiatives that help couples learn how to build successful marriages and be good parents.

My Administration supports community-based efforts that help delinquent fathers improve their lives so they can become effective parents. With job training, employment, counseling, and career advancement education, we hope to make it easier for more fathers to have positive relationships with their sons and daughters. We have also taken important steps to empower and inform parents through the No Child Left Behind Act, ensuring that they will be vital partners in their children's education. Further, every child in America deserves to live in a safe, stable, and loving family; my Administration is committed to increasing public awareness about the importance of adoption and to encouraging Americans to consider adopting children. By pursuing these significant measures, we increase compassion in our society, and we make America a better place for all.

The nurturing and development of children require widespread investment, focus, and commitment. While Government plays an important role in this process, citizens, schools, and civic institutions must also assist parents by reaching out to help meet the needs of young people in their communities. By working together to provide for our children, we will show them the way to a brighter future.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States and consistent with Public Law 103–362, as amended, do hereby proclaim Sunday, July 28, 2002, as Parents' Day. I encourage all Americans to join me in honoring the millions of mothers and fathers, biological and adoptive, foster parents, and stepparents, whose selfless love and determined efforts influence lives for the good of their children and our Nation. I also urge all Americans to express their love, respect, and appreciation to our parents, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–19484
Filed 7–30–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7581 of July 29, 2002

The Bicentennial of the United States Patent and Trademark Office, 2002

By the President of the United States of America

A Proclamation

For two centuries, the United States Patent Office has played a vital role in the scientific, technical, and economic development of our Nation by granting inventors patents for their inventions. As Abraham Lincoln once stated, patents ''added the fuel of interest to the fire of genius.''

The first Patent Act of the United States was signed into law by President George Washington on April 10, 1790. Under this legislation, patent applicants petitioned the Secretary of State for the grant of a patent. The Secretary, in consultation with the Secretary of War and the Attorney General, determined whether the invention or discovery was ''sufficiently useful and important.'' At that time, both the President and the Secretary of State signed patents.

As the number of applications for patents grew, it became necessary to develop an organized review process to handle the increasing volume. In 1793, the law was changed to eliminate examinations, and the job of receiving and granting patents was given to clerks in the Department of State.

On June 1, 1802, the Secretary of State appointed Dr. William Thornton to serve as the first clerk at the Department of State. In that position, Dr. Thornton was solely responsible for receiving and recording patent applications and issuing patents, and his office effectively became the first patent office. From this simple beginning, the Patent Office has grown to become a modern institution of ideas and innovations.

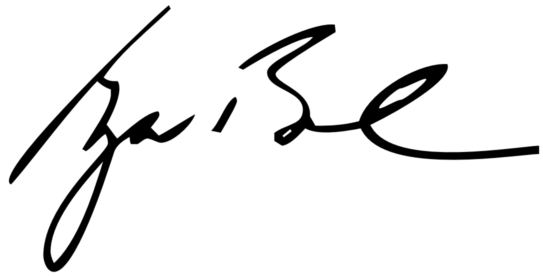
For 200 years, millions of inventors have sought to protect their inventions through the American patent system. These patented inventions include Thomas Edison's electric lamp, Alexander Graham Bell's telegraphy, Orville and Wilbur Wright's flying machine, John Deere's steel plow, George Washington Carver's use of legume oils to produce cosmetics and paint, and Edwin Land's Polaroid camera.

In 1881, the functions of the Patent Office grew to also include the registration of trademarks. Today, the United States Patent and Trademark Office annually receives more than 326,000 patent applications and 232,000 trademark applications. Since the signing of the first Patent Act over two centuries ago, more than 6.3 million United States patents have been issued. The United States Patent and Trademark Office represents one of the largest repositories of scientific and technical knowledge in the world, and much of this information is available on the Internet. Similarly, 2 million current trademark registrations are also available online.

As the Patent Office enters its third century, we commend the important work of the United States Patent and Trademark Office that supports scientific, technological, and intellectual property developments; promotes growth in our economy; and encourages increased prosperity for our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the Bicentennial of the United States Patent and Trademark Office. I call upon all Americans to recognize this anniversary with appropriate programs, ceremonies, and activities, thereby honoring the Office's many scientific, economic, and cultural contributions to our Nation and the world.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–19485
Filed 7–30–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 67, No. 147

Wednesday, July 31, 2002

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 204, 245 and 299

[INS No. 2104–00]

RIN 1115–AGOO

Allowing in Certain Circumstances for the Filing of Form I–140 Visa Petition Concurrently With a Form I–485 Application

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The current Immigration and Naturalization Service (Service) regulations provide that an alien worker who wants to apply for permanent resident by filing the appropriate Form I–485, Application to Register Permanent Residence or Adjust Status, cannot do so until he or she obtains approval of the underlying petition, Form I–140, Immigrant Petition for Alien Worker. This procedure has resulted in an unnecessary delay for certain alien workers. This interim rule amends the Service's regulations by allowing the Form I–485 to be filed concurrently when a visa is immediately available, thereby improving the efficiency of the process as well as customer service. This interim rule also provides that, if an employment-based visa petition is pending on July 31, 2002, the alien beneficiary may obtain the benefits of concurrent filing, but only if the alien beneficiary files the Form I–485, together with the applicable fee and a copy of their Form I–797, Notice of Action, establishing previous receipt and acceptance by the Service of the underlying Form I–140 visa petition. Further, this interim rule will allow the alien worker to apply for employment authorization using Form I–765, Application for Employment Authorization, and for advance parole authorization using Form I–131, Application for Travel Document, while the Form I–485 is pending.

DATES: *Effective date:* This interim rule is effective July 31, 2002.

Comment date: Written comments must be submitted on or before September 30, 2002.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2104–00 on your correspondence. You may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically please include the INS No. 2104–00 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT:
Morrie Berez, Assistant Director, Business and Trade Services Branch, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

Why Is the Service Issuing This Rule?

This interim rule is necessary to improve both efficiency and customer service, and to support the Service's long-established goals for filing of petitions and applications via direct mail. Current regulations at § 204.5(n), § 245.1(g) and § 245.2(a)(2) state that an alien can only submit Form I–485 after the alien has had his or her underlying visa petition, Form I–140, approved, and when an immigrant visa is immediately available. Due to these requirements there has been a delay from the time the Form I–140 is filed with the Service until the alien worker, for whom a visa is otherwise immediately available, can properly file Form I–485 with the Service.

The most practical and efficient way to eliminate this dalay is to permit concurrent filing of Form I–485 together with Form I–140 in cases in which a visa is immediately available. Concurrent filing eliminates the dalay that takes place between approval of Form I–140 and the subsequent filing of Form I–485. This interim rule provides for such concurrent filing.

Does This Interim Rule Change or Amend the Substantive Eligibility Requirements for the Visa Petition or Permanent Residence Applications?

No, this interim rule does not change the current substantive requirements governing eligibility for and adjudication of the Form I–140 nor for the Form I–485.

Who Is Eligible To File Forms I–140 and I–485 Concurrently?

Forms I–140 and I–485 may be filed concurrently only when an immigrant visa number is immediately available. This interim rule does not change the existing requirement that a visa number must be immediately available before an alien can apply for permanent resident status. This interim rule simply applies to aliens who are classifiable under sections 203(b)(1), (2), and (3), of the Immigration and Nationality Act, allowing them to file the Forms I–140 and I–485 at the same time, but only when a visa is immediately available.

If a Form I–140 Visa Petition Previously Filed for an Alien Worker Is Still Pending With the Service on or After the Date This Rule Is Published, and a Visa Number Is Immediately Available, Can the Alien File Form I–485?

Yes, upon issuance of this rule, an alien whose Form I–140 visa petition is pending with the Service may file Form I–485, together with associated forms and fees, with the Service office at which the visa petition was filed. When filing Form I–485, the alien will be required to attach a copy of the Form I–797, Notice of Action, establishing previous receipt and acceptance by the Service of the underlying Form I–140 visa petition. When an immigrant visa is immediately available, Form I–485 may be filed either concurrently with the Form I–140 or anytime thereafter.

If a Visa Number Was Not Immediately Available at the Time a Form I–140 Visa Petition Was Filed, and Then a Visa Number Becomes Available, Can the Alien File Form I–485?

Yes, upon issuance of this rule, if a visa number becomes immediately available since filing of the underlying Form I–140, the alien may tehn file

Form I–485, together with associated forms and appropriate fees, with the Service office at which the visa petition was filed. When filing Form I–485, the alien will be required to attach a copy of the Form I–797, Notice of Action, establishing previous receipt and acceptance by the Service of the underlying Form I–140 visa petition.

If the Alien Is in Deportation or Removal Proceedings, Does the Alien File the Form I–485 Under This Section With the Service or With the Immigration Court or Board of Immigration Appeals (Board)?

For aliens in deportation or removal proceedings, 8 CFR 245.2(a)(2) establishes ''applications shall be made and considered only in those proceedings.'' If the alien is before the Immigration Court, the Form I–485, associated documents and proof of payment of the fees must be filed with the Immigration Court. If the alien has an appeal pending before the Board, the Form I–485, associated documents and proof of payment of the fees must be filed with the Board. The fees must first be paid to, and receipt obtained from, the Service.

If the Alien Files the Form I–485 and Associated Documents With the Immigration Court or the Board After Paying the Proper Fees to the Service, Does Such a Filing Stop or Stay Deportation or Removal Proceedings?

No. The filing of an adjustment action where the underlying visa petition is not current does not by itself stop or stay (suspend) the proceedings. The Board will only accept the filing of the Form I–485 for placement into the Record of Proceedings (ROP). This filing is not a motion to reopen, motion to reconsider, or any other motion beyond a request to include the adjustment application in the file. Furthermore, accepting the application and placing it in the ROP is not a reopening or reconsidering of the case, nor any other action pertaining to the case. If the underlying petition for the alien is approved and a visa is or becomes immediately available, the alien must affirmatively move the Immigration Court or the Board of Immigration Appeals to consider the application for adjudication, or remand the application to the Service for adjudication if the Service concurs in the remand.

Besides Eliminating the Delay for Filing Form I–485, How Else Will These Regulatory Amendments Benefit Aliens?

These amendments will allow the Service to issue Employment Authorization Documentation (EAD) and advance parole authorization (which allows the alien to travel outside of the United States temporarily while his or her Form I–485 is pending with the Service) to certain alien workers within substantially less time than at present. In being able to apply for employment authorization and advance parole, the alien may avoid the adverse consequences of accrual of unlawful presence. To achieve the desired efficiency improvement in the Service's processing, only aliens who have filed a Form I–140 for which a visa number is immediately available and Form I–485 will qualify for these benefits. Therefore, as a result of this interim rule, an eligible beneficiary of a Form I–140 visa petition for whom a visa is immediately available will no longer need to wait for approval of the underlying Form I–140 before eligible to apply for these benefits.

How Does This Interim Rule Affect the September 6, 2000, Interim Rule Relating to National Interest Job Offer Waivers for Physicians?

On September 6, 2000, the Service published in the **Federal Register** at 64 FR 53889 an interim rule relating to national interest job offer waivers for physicians. Under 8 CFR 245.18(f) of that interim rule, when a physician files for adjustment of status the Service is required to give a physician notice of specific requirements relating to the adjustment of the physician's status. This interim rule concerning concurrent filing of Forms I–140 and I–485 requires one conforming amendment to 8 CFR 245.18(f). If the physician filed the Form I–485 concurrently with the Form I–140, the Service will give the required notice upon approval of the Form I–140, rather than upon receipt of the Form I–485. If the physician waits to subsequently file the Form I–485 while the previously filed Form I–140 is still pending, then the Service will give the required notice upon approval of the Form I–140. If the physician files the Form I–485 after the Form I–140 is approved, then the Service will give the required notice upon receipt of the Form I–485.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(B) and (d)(1). This rule relieves the current restriction that bars the filing of an application for permanent residence (Form I–485) until after the underlying visa petition (Form I–140) has been approved. This rule is intended to provide efficiency and fairness to applicants. It is therefore impractical, unnecessary, and contrary to the public interest to publish this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b).

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this interim rule and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is intended to expedite alien worker authorization while the alien's permanent status application (Form I–485) is pending. This rule affects individual aliens, not small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

The information collection requirement (Form I–140) contained in this rule has been approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB control number for this information collection is contain in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 204

Administrative practice and Procedures, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

2. Section 204.5 is amended by revising paragraph (n)(1) to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(n) * * *

(1) *Approval.* An approved employment-based petition will be forwarded to the National Visa Center of the Department of State if the beneficiary resides outside of the United States. If the Form I–140 petition indicates that the alien has filed or will file an application for adjustment to permanent residence in the United States (Form I–485) the approved visa petition (Form I–140), will be retained by the Service for consideration with the application for permanent residence (Form I–485). If a visa is available, and Form I–485 has not been filed, the alien will be instructed on the Form I–797, Notice of Action, (mailed out upon approval of the Form I–140 petition) to file the Form I–485.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902. Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

4. Section 245.1 is amended by revising the third sentence in paragraph (g)(1) to read as follows:

§ 245.1 Eligibility.

* * * * *

(g) * * *

(1) * * * An immigrant visa is considered available for accepting and processing the application Form I–485 is the preference category applicant has a priority date on the waiting list which is earlier than the date shown in the Bulletin (or the Bulletin shows that numbers for visa applicants in his or her category are current). * * *

* * * * *

5. Section 245.2 is amended by revising paragraph (a)(2)(i), to read as follows:

§ 245. Application.

(a) * * *

(2) * * *

(i) *Under section 245.* (A) An immigrant visa must be immediately available in order for an alien to properly file an adjustment application under section 245 of the Act See § 245.1(g)(1) to determine whether an immigrant visa is immediately available.

(B) If, at the time of filing, approval of a visa petition filed for classification under section 201(b)(2)(A)(i), section 203(a) or section 203(b)(1), (2) or (3) of the Act would make a visa immediately available to the alien beneficiary, the alien beneficiary's adjustment application will be considered properly filed whether submitted concurrently with or subsequent to the visa petition, provided that it meets the filing requirements contained in parts 103 and 245. For any other classification, the alien beneficiary may file the adjustment application only after the Service has approved the visa petition.

(C) A visa petition and an adjustment application are concurrently filed only if:

(*1*) The visa petitioner and adjustment applicant each file their respective form at the same time, bundled together within a single mailer or delivery packet, with the proper filing fees on the same day and at the same Service office, or;

(*2*) the visa petitioner filed the visa petition, for which a visa number has become immediately available, on, before or after July 31, 2002, and the adjustment applicant files the adjustment application, together with the proper filing fee and a copy of the Form I–797, Notice of Action, establishing the receipt and acceptance by the Service of the underlying Form I–140 visa petition, at the same Service office at which the visa petitioner filed the visa petition, or;

(*3*) The visa petitioner filed the visa petition, for which a visa number has become immediately available, on, before, or after July 31, 2002, and the adjustment applicant files the adjustment application, together with proof of payment of the filing fee with the Service and a copy of the Form I–797 Notice of Action establishing the receipt and acceptance by the Service of the underlying Form I–140 visa petition, with the Immigration Court or the Board of Immigration Appeals when jurisdiction lies under paragraph (a)(1) of this section.

* * * * *

6. Section 245.18 is amended by revising paragraph (f) introductory text to read as follows:

§ 245.18 How can physicians (with approved Forms I–140) that are serving in medically underserved areas or at a Veterans Affairs facility adjust status?

* * * * *

(f) *Will the Service provide information to the physician about evidence and supplemental filings?* The Service shall provide the physician with the information and the projected timetables for completing the adjustment process, as described in this paragraph. If the physician either files the Form I–485 concurrently with or waits to subsequently file the Form I–485 while the previously filed Form I–140 is still pending, then the Service will given this information upon approval of the Form I–140. If the physician does not file the adjustment application until after approval of the Form I–140 visa petition, the Service shall provide this information upon receipt of the Form I–485 adjustment application.

* * * * *

PART 299—IMMIGRATION FORMS

7. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

8. Section 299.1 is amended in the table by revising the entry for Form I–140, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* *	*	* *
I–140	08–30–01	Immigrant Petition for Alien Worker.
* *	*	* *

Dated: July 5, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–19249 Filed 7–30–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 01–AGL–06]

Modification of Class D Airspace; Bloomington, IN; Modification of Class E Airspace; Bloomington, IN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects several errors contained in a Final Rule that was published in the **Federal Register** on Wednesday, May 8, 2002 (67 FR 30778). The Final Rule modified Class D and Class E airspace at Bloomington, IN.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 02–11495 published on Wednesday, May 8, 2002 (67 FR 30778), modified Class D and Class E Airspace at Bloomington, IN. The Docket incorrectly referred to Bloomington, IL rather than Bloomington, IN. This action corrects these errors, by replacing the State of IL with the State of IN throughout the document.

Accordingly, pursuant to the authority delegated to me, the errors for the Class D and Class E Airspace, Bloomington, IN, as published in the **Federal Register** Wednesday, May 8, 2002 (67 FR 30778), (FR Doc. 02–11495), are corrected as follows:

1. On page 30778, Columns 1 and 2, in the heading and preamble, correct ''Bloomington, IL'' to read ''Bloomington, IN'', each place it appears.

§ 71.1 [Corrected]

2. On page 30778, column 3, in the Class D airspace designation under Paragraph 5000, correct ''Bloomington, IL'' to read ''Bloomington, IN''.

3. On page 30779, column 1, in the Class E airspace designation under Paragraph 6005, correct ''Bloomington, IL'' to read ''Bloomington, IN''.

* * * * *

Issued in Des Plaines, Illinois, on July 18, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–19367 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–022; Order No. 587–Q]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued July 23, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: This order rules on requests for rehearing and clarification of the final rule issued on May 1, 2002 (67 FR 30788) that incorporated by reference Version 1.5 of the consensus natural gas industry standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB). In particular, the order addresses requests for clarification and rehearing related to the standards governing title transfer tracking.

EFFECTIVE DATE: The regulations became effective June 7, 2002.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283.

Kay Morice, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0507.

SUPPLEMENTARY INFORMATION:

Federal Energy Regulatory Commission Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–Q; Docket No. RM96–1–022; Order on Rehearing and Clarification.

Issued July 23, 2002.

1. In Order No. 587–O,[1] the Federal Energy Regulatory Commission (Commission) amended § 284.12 of its open access regulations to incorporate by reference Version 1.5 of the consensus industry standards for the natural gas industry promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB). These standards include requirements related to title transfer tracking (TTT) under which pipelines generally are responsible for accommodating title transfer tracking services at all pooling points.

2. On May 31, 2002, National Fuel Gas Supply Corporation (National Fuel) filed a request for clarification and rehearing relating to the adoption of the TTT standards. In particular, National Fuel contends that pipelines need only support TTT where the pipeline has a contractual relationship with a Title Transfer Tracking Service Provider or Third Party Account Administrator and that the only parties for whom pipelines need to accommodate TTT services are Title Transfer Tracking Service Providers or Third Party Account Administrators. As discussed below, the Commission provides clarification that a party requesting the processing of title transfers must have a contract with the pipeline, but denies National Fuel's request that pipelines be required to process title transfer nominations only from Title Transfer Tracking Service

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–O, 67 FR 30788 (May 8, 2002), III FERC Stats. & Regs. Regulations Preambles, ¶ 31,129 (May 1, 2002).

Providers and Third Party Account Administrators. This decision is in the public interest because it will ensure that pipelines will not limit the processing of title transfers to select parties, but will provide the same service, without undue discrimination, to all shippers.

Background

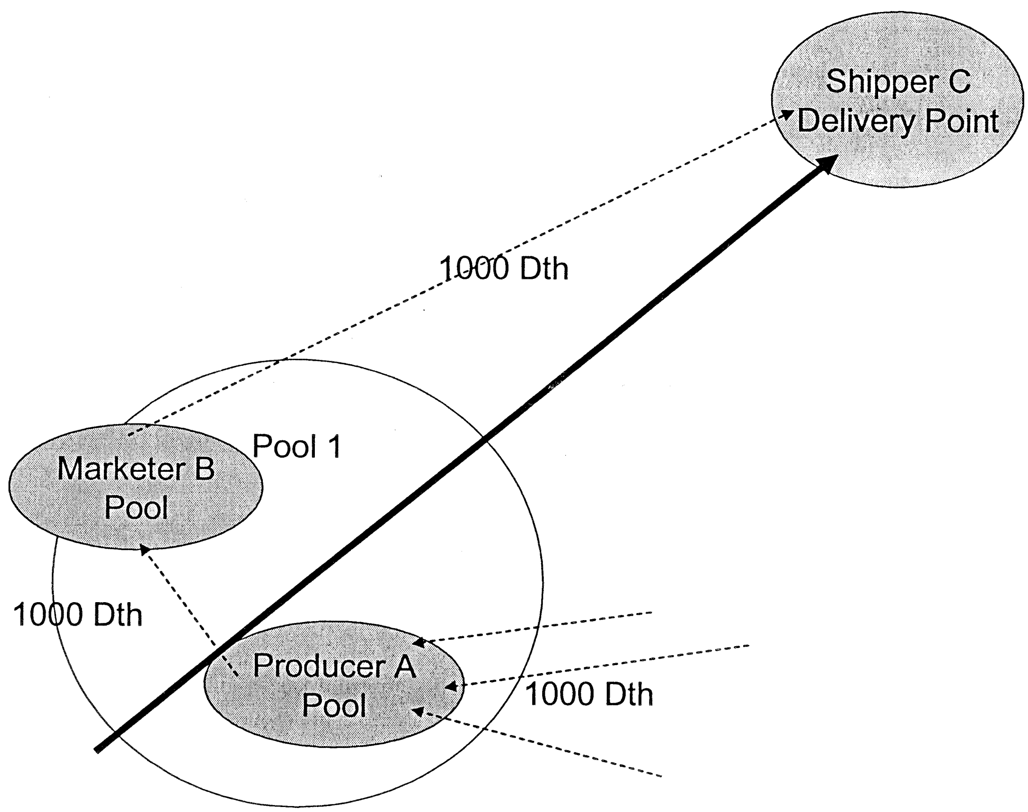
3. Title transfer is defined as ''the change of title to gas between parties at a location.'' [2] Title Transfer Tracking (TTT) is defined as ''the process of accounting for the progression of title changes from party to party that does not effect a physical transfer of the gas.'' [3] The two NAESB standards generally defining the pipelines' responsibility for processing title transfers are Standards 1.3.64 and 1.3.65.[4] Standard 1.3.64 provides:

At a minimum, the Transportation Service Providers (TSP) should be responsible for accommodating Title Transfer Tracking (TTT) services at all points identified by the TSP as pooling points, where TTT services are requested. In absence of existing pooling points or in addition to existing pooling points where access to TTT activity is not reasonably accessible for supply receipt locations covered by an OBA, TSPs should be responsible for accommodating TTT at no less than one location.

Standard 1.3.65 states:

The Title Transfer Tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes. At the Transportation Service Provider's election, the confirmation process may also be utilized with Title Transfer Tracking Service Providers within the TSP's system.

4. In Order No. 587–O, the Commission interpreted these standards as requiring pipelines to permit and process, on a non-discriminatory basis, transportation nominations (along with required responsive scheduling information) effecting transfers of title at pooling points by any party including shippers, poolers, or third party account administrators.[5] The Commission provided the following example of the pipeline's obligations under the standards. In the example, Producer A aggregates 1000 Dth of gas from three receipt points at its pool at Pool 1, sells 1000 Dth to Marketer B at Marketer B's pool at Pool 1, and Marketer B sells 1000 Dth to Shipper C at the pooling point for transportation to Shipper C's delivery point under Shipper C's firm transportation contract. The Commission explained that, under the NAESB standards, the pipeline would have to process a transportation nomination from Producer A and the required scheduling responses to reflect the transfer of gas from Producer A's pool to Marketer B's pool. Other than processing the transportation nomination to reflect the in-place transfer of gas, the pipeline would be required to provide no other ''accounting services'' [6] respecting the transfer of title.



5. In its rehearing request, National Fuel maintains the Commission should clarify that pipelines need only support TTT where the pipeline has a contractual relationship with a Title Transfer Tracking Service Provider or

[2] 18 CFR 284.12(a)(1)(i), Standard 1.2.14 (Version 1.5).

[3] 18 CFR 284.12(a)(1)(i), Standard 1.2.15 (Version 1.5).

[4] 18 CFR 284.12(a)(1)(i), Standards 1.3.64 and 1.3.65 (Version 1.5).

[5] A Third Party Account Administrator is defined as a Title Transfer Tracking Service Provider other than the Transportation Service Provider. Standard 1.2.17 (Version 1.5).

[6] Standard 1.2.15 defines title transfer tracking as ''the process of accounting for the progression of title changes from party to party that does not effect a physical transfer of the gas.''

Third Party Account Administrator. National Fuel further contends that the only parties for whom pipelines need to accommodate TTT services are Title Transfer Tracking Service Providers or Third Party Account Administrators.

6. On June 7, 2002, Dominion Resources, Inc. also filed a request for rehearing or reconsideration and clarification of Order No. 587–O. This rehearing request was filed late, and, accordingly, will not be addressed.[7]

Discussion

7. National Fuel maintains that the Commission's statement in Order No. 587–O (that pipelines must ''effect[] transfers of title at pooling points by any party including shippers, poolers, or third party account administrators'') can be read to require pipelines to process title transfers regardless of whether there is a contractual relationship between the party transferring title and the pipeline. National Fuel further argues that the Commission has incorrectly provided that pipelines must accommodate TTT services from other than Title Transfer Tracking Service Providers (and Third Party Account Administrators),[8] and it urges the Commission to clarify that the obligation of a pipeline to accommodate TTT services arises in the context of services requested to be performed by Title Transfer Tracking Service Providers and Third Party Account Administrators.

8. The Commission agrees with National Fuel that pipelines need only process title transfers from parties with contractual relationships with the pipeline. Pipelines need to be able to verify the parties with whom they deal. The obligation to process title transfer nominations, however, extends to any party with a contractual relationship with the pipeline, including, but not limited to, parties with transportation or storage contracts, pooling contracts or operational balancing agreements, Third Party Account Administrators, and agents of any of the foregoing.

9. The Commission does not agree with National Fuel's interpretation of the standards as providing that pipelines are required to accommodate title transfers *only with* Third Party Account Administrators, and denies the rehearing request. The Commission finds that, as discussed below, National Fuel's interpretation is not supported by the text of the standards. Moreover, adopting National Fuel's interpretation, which would limit the obligation of a pipeline to provide nomination services only for certain third parties, would lead to practical difficulties, and would be inconsistent with a pipeline's obligation to provide services in a not unduly discriminatory manner under the Natural Gas Act, and the Commission's regulations.

10. The two principal standards defining the pipelines' obligations to support title transfers are Standards 1.3.64 and 1.3.65. In relevant part, these standards provide that ''at a minimum, the Transportation Service Providers (TSP) should be responsible for accommodating Title Transfer Tracking (TTT) services at all points identified by the TSP as pooling points, where TTT services are requested,'' and that ''the Title Transfer Tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes.'' These standards do not state that pipelines are to support title transfer tracking only with Title Transfer Tracking Service Providers or Third Party Account Administrators.[9] These standards impose a general obligation on pipelines to accommodate title transfer tracking at pooling points through the nominations, quick responses and scheduled quantities processes.[10] While other standards do require pipelines to accommodate title transfer tracking from Third Party Account Administrators, these standards do not provide that Third Party Account Administrators and Title Transfer Tracking Service Providers are the sole parties from whom pipelines are required to accommodate title transfer nominations. The ability to use Third Party Account Administrators is an additional option under the standards for obtaining title transfer tracking services; the standards do not make it the exclusive method of obtaining title transfer tracking services, nor do the standards specifically preclude shippers or others from undertaking the process of accounting for title transfers themselves.[11]

11. Moreover, the standards define a Third Party Account Administrator only as ''a Title Transfer Tracking Service Provider other than the Transportation Service Provider.''[12] This definition does not specifically define or limit who can be a Third Party Account Administrator, nor does it preclude a shipper, pooler, point operator, or other firm with a contract with the pipeline from acting as a Third Party Account Administrator only with respect to its own sales. National Fuel fails to provide citation to a specific definition of the characteristics necessary qualify as a Third Party Account Administrator, nor does it explain why under the standards any party, including a shipper, pooler, point operator, cannot qualify as a Third Party Account Administrator with respect only to its own transactions. The definition of Third Party Account Administrator, therefore, is sufficiently broad to include any party wanting to account for its own title transfers and supports the conclusion that pipelines are required to process nominations reflecting title transfers from any party with a contractual relationship with the pipeline.

12. National Fuel asserts that standard 1.2.19 (which provides that ''[a] title transfer Nomination is a nomination line item requesting the service of Title Transfer Tracking and is sent by an Account Holder to a Title Transfer Tracking Service Provider'') and standard 1.2.16 (which defines a Title Transfer Tracking Service Provider as a ''party conducting the title transfer tracking activity'') support its view that title transfer tracking nominations will be made only to the Title Transfer Tracking Service Provider, not the pipeline. But these standards only define the method by which shippers choosing to use a Third Party Account Administrator will communicate with the Third Party Account Administrator; the standards do not specifically state that pipelines are required to process title transfers only from Third Party Account Administrators or that pipelines can refuse to process title transfers from shippers or other parties.[13]

[7] Order No. 587–O was issued on May 1, 2002, and Dominion Resources rehearing request was not filed until June 7, 2002, more than 30 days from the date of issuance. Under the Natural Gas Act and the Commission regulations, rehearing requests must be filed ''within thirty days after the issuance of such order.'' Natural Gas Act, § 19, 15 U.S.C. 7174 (a); 18 CFR 385.713 (rehearing requests must be filed no later than 30 days after issuance of final decision or final order); 18 CFR 385.2007 (issuance is defined as the earliest of posting or public notice).

[8] Under the standards, a ''Title Transfer Tracking Service Provider is a party conducting the title transfer tracking activity,'' and a ''Third Party Account Administrator is a Title Transfer Tracking Service Provider other than the Transportation Service Provider.'' Standards 1.2.16 and 1.2.17.

[9] The only relevant issue in National Fuel's rehearing request relates to Third Party Account Administrators, since the underlying assumption of National Fuel's rehearing is that the pipeline will not be establishing a Title Transfer Tracking Service Provider.

[10] In effect, the standards require pipelines to process a nomination that reflects the movement of gas from the pool of the party selling gas to the pool of the purchaser. In the prior example, at P 4, Producer A would be transporting gas from its Pool to Marketer B's pool.

[11] No pipeline or party other than National Fuel has contested the Commission's interpretation of the standards.

[12] Standard 1.2.17.

[13] Indeed, as pointed out above, the standards would not specifically preclude shippers, poolers, or point operators from qualifying as Third Party

13. National Fuel also asserts that an interpretation requiring pipelines to accept ''nominations * * * effecting transfers of title'' from all comers would inappropriately require pipelines to assume the role of a Title Transfer Tracking Service Provider. However, as the Commission stated in Order No. 587–O, under the standards, pipelines are required only to process, on a non-discriminatory basis, nominations to reflect the in-place transfer of gas; they are not required to provide the other ''accounting'' services that constitute title transfer tracking.[14] Under the standards, pipelines are required only to process in-place title transfers using the same nomination and confirmation procedures used to process other transportation nominations. National Fuel moreover has not shown that applying the same nomination processes to title transfers is unduly burdensome.

14. The Commission also rejects National Fuel's proposed interpretation of the standards because it would create practical difficulties for shippers. On some pipelines, the number of shippers that want to conduct title transfers or the overall number of such transactions may not be sufficient to economically support a third-party firm that offers accounting services for title transfers. Under National Fuel's interpretation, however, these shippers could be precluded from transferring title at pooling points even though they are willing to account for those transfers themselves.

15. In addition, National Fuel's interpretation of the standards ignores the requirement in the Natural Gas Act[15] and the Commission's regulations[16] that pipelines provide services connected with interstate transportation without undue discrimination. Under National Fuel's interpretation, pipelines would be discriminating in their handling of title transfer nominations by processing such nominations from Third Party Account Administrators or Title Transfer Tracking Service Providers, but refusing to provide the same service for other parties doing business on the pipelines. In implementing and interpreting NAESB's standards, the standards need to be interpreted in a way that is consistent with the Natural Gas Act and Commission regulations.[17] The Commission finds that requiring pipelines to process title transfer nominations on a non-discriminatory basis is more consonant with its statutory and regulatory obligations than National Fuel's interpretation.

16. National Fuel states that it anticipates that it will raise its requested clarifications with NAESB and suggests that the Commission defer addressing these issues until NAESB has an opportunity to interpret the standards. The Commission will not defer ruling on National Fuel's rehearing request. Since the NAESB standards do not compel or support National Fuel's reading, and National Fuel's interpretation raises issues regarding compliance with statutory and regulatory requirements, the Commission finds that the requirement in Order No. 587–O that pipelines process title transfer nominations with all parties is more consistent with those responsibilities.

The Commission orders: The request for clarification is granted and the request for rehearing is denied as discussed in the body of the order.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19277 Filed 7–30–02; 8:45 am]

BILLING CODE 6710–01–P

Account Administrators in order to process their own title transfers.

[14] Standard 1.2.15 defines title transfer tracking as the ''process of *accounting for* the progression of title changes from party to party.'' (emphasis added).

[15] 15 U.S.C. 717c(b) (''no natural gas company shall * * * (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service'').

[16] 18 CFR 284.7 & 284.9 (''An interstate pipeline or intrastate pipeline must provide such service without undue discrimination, or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind'').

[17] *See United Distribution Cos.* v. *FERC,* 88 F.3d 1105, 1166 (D.C. Cir 1996), Independent Insurance Agents v. Hawke, 211 F.3d 638, 643 (D.C. Cir. 2000) (under the *Chevron* test, an agency's interpretation of a statute must be reasonable and consistent with the statute's purpose). *See also Concrete Pipe and Products* v. *Construction Laborers Pension Trust,* 508 U.S. 602, 629 (statutes are to be construed to avoid serious doubt of their constitutionality).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 00C–0929]

Listing of Color Additives Exempt From Certification; Sodium Copper Chlorophyllin; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of June 20, 2002, for the final rule that appeared in the **Federal Register** of May 20, 2002 (67 FR 35429). The final rule amended the color additive regulations to provide for the safe use of sodium copper chlorophyllin as a color additive in citrus-based dry beverage mixes.

DATES: Effective date confirmed: June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3076.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 20, 2002 (67 FR 35429), FDA amended the color additive regulations to add § 73.125 Sodium copper chlorophyllin (21 CFR 73.125) to provide for the safe use of sodium copper chlorophyllin as a color additive in citrus-based dry beverage mixes.

FDA gave interested persons until June 19, 2002, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of May 20, 2002, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the May 20, 2002, final rule. Accordingly, the amendments issued thereby became effective June 20, 2002.

Dated: July 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19300 Filed 7–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 226, 510, and 514

[Docket No. 88N–0038]

RIN 0910–AA02

Records and Reports Concerning Experience With Approved New Animal Drugs; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) is delaying the effective date of an interim final rule entitled ''Records and Reports Concerning Experience With Approved New Animal Drugs,'' published in the **Federal Register** of February 4, 2002 (67 FR 5046). The interim final rule amended FDA's regulations for records and reports concerning experience with approved new animal drugs, with an effective date of August 5, 2002. FDA is delaying the effective date so it can submit and seek approval on the information collection provisions of the rule under the Paperwork Reduction Act of 1995 and address comments received on the interim final rule.

DATES: The effective date published at 67 FR 5046, February 4, 2002, is delayed indefinitely. FDA will announce in the **Federal Register** an effective date.

FOR FURTHER INFORMATION CONTACT: Glenn Peterson, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0224, or gpeterso@cvm.fda.gov.

Dated: July 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19299 Filed 7–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1310, 1313

[DEA–229F]

RIN 1117–AA65

Change of Address for Filing Chemical Import/Export Declarations (DEA Form 486), Reports for the Importation or Exportation of Tableting and Encapsulating Machines, and Other Related Reports

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: DEA is amending the Code of Federal Regulations (CFR) to change the address for filing certain required reports. These reports include: Import/Export Declarations, including international transactions, for listed chemicals (DEA Form 486); Reports for the importation or exportation of tableting and encapsulating machines (not a DEA Form-486); Quarterly reports on the importation or exportation of listed chemicals when the DEA Form 486 is waived; Reports for the return of exported listed chemicals or exported tableting and encapsulating machines; and Advance notices of importation for transshipment or transfer of listed chemicals. DEA is changing the address in the CFR because the U.S. Postal Service assigned DEA a new post office box when the post office was relocated.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Why Is DEA Changing the Address for Filing Certain Reports?

The U.S. Postal Service has assigned DEA a new post office box number that replaces the one listed in the Code of Federal Regulations for filing certain required reports. This occurred when the U.S. Postal Service relocated the post office. DEA does not have any discretion concerning this change.

What Is the New Address?

DEA is revising Title 21, Code of Federal Regulations, wherever it mentions: P.O. Box 28346, Washington, DC 20038.

The new address for filing the affected reports is: P.O. Box 27284, Washington, DC 20038.

With publication of this rule, all reports must be sent to the new address.

What Reports Are Affected?

Title 21 of the Code of Federal Regulations requires that certain reports for listed chemicals and tableting and encapsulating machines must currently be filed with the Drug Enforcement Administration at the old address (P.O. Box 28346). The reporting requirements are described in 21 CFR parts 1310 and 1313.

In 21 CFR part 1310, reports affected by the address change include those for the importation and exportation of tableting and encapsulating machines (21 CFR 1310.05(c)) and reports concerning the return of exported tableting or encapsulating machines (21 CFR 1310.06(g)).

In 21 CFR part 1313, the following reports are affected by the address change:

(1) DEA Form 486 for authorization to import listed chemicals (21 CFR 1313.12(b));

(2) Quarterly reports on importations of listed chemicals when the advance notification is waived and no DEA Form 486 is required (21 CFR 1313.12(e));

(3) DEA Form 486 for authorization to export listed chemicals (DEA 1313.21(b));

(4) Quarterly reports on exportation of listed chemicals when the advance notification is waived and no DEA Form 486 is required (21 CFR 1313.21(e));

(5) Reports concerning the return of exported listed chemicals (21 CFR 1313.22(e));

(6) Advance notices of importation for transshipment or transfer of listed chemicals (21 CFR 1313.31(b)); and

(7) DEA Form 486s from brokers or traders for authorization of international transactions of listed chemicals (21 CFR 1313.32(b)(1)).

Regulatory Certifications

Administrative Procedure Act (5 U.S.C. 553)

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (5 U.S.C. 553), including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest. This rule pertains to agency management, organization and procedure. DEA has no discretion in the change of the post office box number and thus finds it unnecessary and impracticable to permit public notice and comment. Therefore, DEA is publishing this document as a final rule.

Further, as the change of address is imminent, and since a delay in the effective date of this regulation could impede the timely receipt of required reports by the regulated industry, DEA finds there is good cause to make this final rule effective immediately.

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This final rule merely changes an address, permitting industry to report to DEA in a timely manner.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Congressional Review Act

The Drug Enforcement Administration has determined that this action is a rule relating to agency procedure and practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. Section 801 does not apply.

List of Subjects

21 CFR Part 1310

Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

21 CFR Part 1313

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR parts 1310 and 1313 are amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

§ 1310.05 [Amended]

2. Section 1310.05(c) is amended by removing the words ''P.O. Box 28346'' and adding, in their place, the words ''P.O. Box 27284''.

§ 1310.06 [Amended]

3. Section 1310.06(g) is amended by removing the words ''P.O. Box 28346'' and adding, in their place, the words ''P.O. Box 27284''.

PART 1313—[AMENDED]

4. The authority citation for part 1313 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 971.

§ 1313.12 [Amended]

5. Section 1313.12(b) and (e) introductory text are amended by removing the words ''P.O. Box 28346'' and adding, in their place, the words ''P.O. Box 27284''.

§ 1313.21 [Amended]

6. Section 1313.21(b) and (e) introductory text are amended by removing the words ''P.O. Box 28346'' and adding, in their place, the words ''P.O. Box 27284''.

§ 1313.22 [Amended]

7. Section 1313.22(e) is amended by removing the words ''P.O. Box 28346'' and adding, in their place, the words ''P.O. Box 27284''.

§ 1313.31 [Amended]

8. Section 1313.31(b) introductory text is amended by removing the words ''P.O. Box 28346'' and adding, in their place, the words ''P.O. Box 27284''.

§ 1313.32 [Amended]

9. Section 1313.32(b)(1) is amended by removing the words ''P.O. Box 28346'' and adding, in their place, the words ''P.O. Box 27284''.

Dated: July 16, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 02–19122 Filed 7–30–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6190]

RIN 2125–AE67

Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its color specifications for retroreflective signing materials. The current color specifications used in traffic control were developed in the late 1960's. The technological advances in the manufacturing of signing and markings materials and the measurement of color have required the FHWA to revise and expand the color specifications. This revision includes daytime and nighttime specifications for both assigned and unassigned colors found in the Manual on Uniform Traffic Control Devices (MUTCD). The FHWA is adding daytime and nighttime specifications for

retroreflective pavement marking materials. The materials are required to provide the specified colors under the identified measurement protocols throughout service life.

EFFECTIVE DATE: This final rule is effective August 30, 2002.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Ernest Huckaby, Office of Transportation Operations (HOTO), (202) 366–9064. For legal information: Mr. Raymond Cuprill, Office of the Chief Counsel (HCC–40), (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the NPRM, and all comments received may be viewed online through the Document Management System (DMS) at: *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov.*

The current color specifications are on file at the Office of the Federal Register, 800 North Capitol Street, NW., 7th Floor, Suite 700, Washington, DC 20408, and are available for inspection and copying at the FHWA, Office of Transportation Operations, Room 3408, 400 7th St., SW., Washington, DC 20590, as prescribed in 49 CFR part 7.

Background

This final rule is based on the FHWA's notice of proposed rulemaking (NPRM), Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials, published in the **Federal Register** on December 21, 1999, at 64 FR 71354. All comments received in response to the NPRM have been considered in adopting this final rule. These comments are discussed in the section entitled ''Discussion of Comments.''

The MUTCD is incorporated by reference in 23 CFR 655.601. The color specifications are found in the appendix to subpart F of part 655.

The current specifications for the color of retroreflective sign sheeting were determined on the basis of material available nearly 20 years ago. Since then, new microprismatic material has been commercially available and the original CIE [1] Illuminant C has been replaced with CIE Illuminant D_{65}. In addition, an extensive international effort is in progress to specify the nighttime appearance of retroreflective materials. Lastly, expanding the specifications to include fluorescent materials is also necessary at this time since these materials are used on several traffic signs. In addition to revising the daytime color specifications for retroreflective sign sheeting material used primarily for traffic signs, color specifications for pavement markings and markers are included in this revision.

Discussion of Comments

Interested persons were invited to participate in the development of this final rule by submitting written or electronic comments on the NPRM to FHWA Docket No. FHWA–99–6190 on or before June 21, 2000. The FHWA received 21 comments to the docket (6 from State and local DOTs; 7 from industry; 4 from associations; 3 from institutes/universities; and 1 Federal agency). The FHWA received significant comments that included concerns with the availability and cost of the laboratory equipment used, concerns with the use of illuminant D_{65} for evaluating the performance of luminescent for fluorescent materials, the use of luminescent luminance factor (Y_F) for fluorescent materials.

The FHWA believes the amount of information presented in the tables published in the NPRM may be overwhelming in content and confusing. The FHWA has placed the ''luminance'' values in a separate table (i.e., 1a, 3a, and 5a). It is important for users to know that these sub-tables should be read together in order to define the correct color requirement.

Commenters recommended that FHWA provide the appropriate references for types of sheeting material for retroreflective materials. A breakdown of sheeting type has been added as Table 1a.

Another concern identified through several comments was the lack of human factors research related to driver recognition of sign colors. The discussion of human factors research is beyond the scope of this rulemaking and will be addressed in the future. While laboratory studies have indicated that human observers require fairly small color regions to achieve a high degree of agreement (greater than 90 percent) for color naming, there have been no studies with forced choices. That is, when presented with a variety of samples spanning colors within a given color region, responses will vary. Additional studies are needed wherein the observer is forced to choose between specified color names to determine if samples taken from near the allowable color region boundaries might be mistaken for a neighboring color. Pending such studies, however, there are no indications that the existing color system should be modified. The color regions in the final rule are not significantly different from previously defined color regions and should not be changed without substantial indication of inadequacy.

Several commenters recommended that color specifications for the color ''fluorescent red'' be included in the specifications. Fluorescent red was not proposed in Tables 3 or 4 of the NPRM and it is beyond the scope of this rulemaking. However, this color will be addressed in future rulemaking, which will allow the public the opportunity to comment on the proposed specification.

The FHWA adopts, with some changes, the proposed Table 1 to Part 655, Subpart F, Daytime Color Specification Limits for Retroreflective Material with CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}. The American Society for Testing and Materials (ASTM) sets industry standards for defining daytime sign color. It also established a standard addressing color specifications. With few exceptions, Table 1 is the same as this standard.

The color specifications for ''white'' have been adjusted from table 1, proposed in the NPRM, which results in a slight enlargement of the color region in all directions. This slightly larger color region will not result in loss of color differentiation between white and other colors as long as differences in the daytime luminance factors are maintained.

The color specifications for ''orange'' have been adjusted from the proposed table by adjusting the red border which allows a slightly shorter wavelength hue line than that proposed in the NPRM. This results in a slightly greater separation between the red and orange color regions which will aid in daytime color recognition.

The ''purple'' color specifications have been modified to reflect the colors

[1] International Commission on Illumination.

actually in use. Several commenters pointed out that specifying precise color regions for unassigned colors may be premature. Accordingly, a revised color region, incorporating both the hues from the initial proposal in the NPRM and the existing commercial materials, are recommended. As use of the materials is further refined, the purple color box may be optimized or even separated into two distinct colors.

The ''coral'' and ''yellow-green'' color specifications have been removed from this table. Several commenters mentioned that there are no studies that indicate yellow-green or coral are effective signing colors. The FHWA has adopted the color ''fluorescent yellow-green'' for use with pedestrian, school, and bicycle crossing warning signs and has included color specifications in Table 3.

The color ''fluorescent coral'' is being proposed for use in incident management and is being considered under FHWA Docket No. FHWA–2001–11159, published at 67 FR 35850 on May 21, 2002.

In response to several docket comments, we have removed the color ''black'' from the table. Black sheeting used in traffic control signage is not a retroreflective product. Commercially available vinyl elastomeric films meet all the requirements for a high-contrast legend material.

We have added Table 1a to part 655, Subpart F, Daytime Luminance Factors (percent) for Retroreflective Material with CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}, in order to be consistent with the format found in ASTM Standard Specification D4956–01[2] which provides three separate tables of daytime luminance factors (Y) for retroreflective materials: One for ASTM Types I, II, III and VI sheeting; one for ASTM Types IV, VII, VIII, and IX; and the third for ASTM Type V sheeting. The different manufacturing techniques for the various ASTM types have resulted in varying luminance factors. ASTM Type V is metallized microprismatic retroreflecting material used primarily for delineators. This material is not the predominant daytime signal, but provides a nighttime signal for delineation.

The FHWA has adopted Table 2 to part 655, Subpart F, Nighttime Color Specification Limits for Retroreflective Material With CIE 2 Degree Standard Observer and Observation Angle of 0.33 Degrees, Entrance Angle of Plus 5 Degrees and CIE Standard Illuminant A, with very minor changes. The color specifications for the color ''orange'' have been reordered and the two missing coordinates for the color ''red'' have been added. The color ''coral'' has been removed from the table for reasons given in the preamble discussion for Table 1. At present there are no known instruments available for field measurement of nighttime color.

The FHWA has adopted Table 3 to Part 655, Subpart F, Daytime Color Specification Limits for Fluorescent Retroreflective Material With CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}. The contents of Tables 3 and 4 reflect the general comments received in response to the docket. The white boundaries for fluorescent colors have been shifted closer to the chromaticity diagram loci from those positions proposed in the NPRM in response to comments that color saturation is as important as luminance to achieve high conspicuity for colored materials.

The FHWA has added Table 3a to Part 655, Subpart F, Daytime Luminance Factors (Percent) for Fluorescent Retroreflective Material With CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}, which contains the luminance factors found in Table 3 proposed in the NPRM for easier recognition. Specifying the requirements for high-conspicuity (fluorescent) materials by using daytime luminance factors under CIE Standard Illuminants D_{65} and D_{150} (analogous to noontime and twilight) have been extensively discussed with the ASTM. There is disagreement over the use of the fluorescent luminance factor (Y_F) as a material requirement since Y_F cannot be measured in the field at this time. As an interim step, the FHWA is defining high-conspicuity materials using a value for the daytime luminance factor that roughly equals 70 percent of the MacAdam Limit[3] for a color near the centroid of the color region. The fluorescent luminance factor (Y_F) for high-conspicuity materials is provided as a provision for quality control by manufacturers, and is not recommended as a measurement of materials performance for acceptance or while in service.

Table 4 to part 655, Subpart F, Nighttime Color Specification Limits for Fluorescent Retroreflective Material With CIE 2 Degree Standard Observer and Observation Angle of 0.33 Degree, Entrance Angle of Plus 5 Degrees and CIE Standard Illuminant A, is adopted with only a slight re-ordering of the x,y coordinates for consistency. At present there are no known instruments available for field measurement of nighttime color.

Table 5 to part 655, Subpart F, Daytime Color Specification Limits for Retroreflective Pavement Marking Material With CIE 2 Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}, is adopted with only a slight re-ordering of the x,y coordinates for consistency.

Table 5a part 655, Subpart F, Daytime Luminance Factors (Percent) for Retroreflective Pavement Marking Material With CIE 2Degree Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}, is added and, for easier recognition, contains the luminance factors found in the Table 5 proposed in the NPRM. The luminance factor (Y) for white and yellow pavement marking materials proposed in the NPRM were significantly higher than values typically measured on the National Transportation Product Evaluation Program test decks after a fairly short period of time. The FHWA deleted the column heading ''Without Glass Beads'' as the materials should be measured in the manner they are intended to be used, which includes the glass beads.

Table 6 to part 655, subpart F, Nighttime Color Specification Limits for Retroreflective Pavement Marking Material with CIE 2 Degree Standard Observer, Observation Angle of 1.05 Degrees, Entrance Angle of Plus 88.76 Degrees and CIE Standard Illuminant A, is adopted in the final rule with a modification to what was proposed in the NPRM to the yellow pavement marking materials. The proposed specifications did not provide sufficient separation between yellow and white, leading to the potential loss of color recognition at night. This specification corrects that problem.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and

[2] ASTM Standard D4956–01a, Standard Specification for Retroreflective Sheeting for Traffic Control. Copies of this standard may be obtained by contacting ASTM at ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 or through the ASTM website (www.astm.org).

[3] The MacAdam Limit is the theoretical maximum luminance factor achievable for a reflective color under a given illuminant. Values range from 100 percent, for ideal white, to 0 percent for ideal black.

procedures. The economic impact of this rulemaking will be minimal. Although the new specifications have been revised to incorporate the latest research, the basic criteria remain essentially the same. These changes will not adversely affect, in a material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities and has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated above, although the FHWA has amended this final rule to incorporate the latest research, the basic criteria remain essentially the same. For these reasons, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 et seq).

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: July 23, 2002.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 655, as set forth below:

PART 655—[AMENDED]

1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

2. Revise the appendix to subpart F to read as follows:

Appendix to Subpart F of Part 655—Alternate Method of Determining the Color of Retroreflective Sign Materials and Pavement Marking Materials

1. Although the FHWA Color Tolerance Charts depreciate the use of spectrophotometers or accurate tristimulus colorimeters for measuring the daytime color of retroreflective materials, recent testing has determined that 0/45 or 45/0 spectroradiometers and tristimulus colorimeters have proved that the measurements can be considered reliable and may be used.

2. The daytime color of non-fluorescent retroreflective materials may be measured in accordance with ASTM Test Method E1349, ''Standard Test Method for Reflectance Factor and Color by Spectrophotometry Using Bidirectional Geometry'' or ASTM Test Method E 1347 (Replaces E97), ''Standard Test Method for Color and Color-Difference Measurement by Tristimulus (Filter)

Colorimetry.'' The latter test method specified bidirectional geometry for the measurement of retroreflective materials. The geometric conditions to be used in both test methods are 0/45 or 45/0 circumferential illumination or viewing. Uniplanar geometry is not recommended for material types IV or higher (designated microprismatic). The CIE standard illuminant used in computing the colorimetric coordinates shall be D_{65} and the 2 Degree Standard CIE observer shall be used.

3. For fluorescent retroreflective materials ASTM E991 may be used to determine the chromaticity provided that the D_{65} illumination meets the requirements of E 991. This practice, however, allows only the total luminous factor to be measured. The fluorescent luminous factor must be determined using bispectral fluorescent colorimetry. Commercial instruments are available which allow such determination. Some testing laboratories are also equipped to perform these measurements.

4. For nighttime measurements CIE Standard Illuminant A shall be used in computing the colorimetric coordinates and the 2 Degree Standard CIE Observer shall be used.

5. Average performance sheeting is identified as Types I and II sheeting and high performance sheeting is identified as Type III. Super-high intensity sheeting is identified as Types V, VI, and VII in ASTM D 4956.

6. The following nine tables depict the 1931 CIE Chromaticity Diagram x and y coordinates for the corner points defining the recommended color boxes in the diagram and the daytime luminance factors for those colors. Traffic control materials shall maintain the colors and luminance factors provided in the appropriate tables throughout service. Lines drawn between these corner points specify the limits of the chromaticity allowed in the 1931 Chromaticity Diagram. Color coordinates of samples that lie within these lines are acceptable. For blue and green colors the spectrum locus is the defining limit between the corner points located on the spectrum locus:

TABLE 1 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	y	x	x	y
White	0.303	0.300	0.368	0.366	0.340	0.393	0.274	0.329
Red	0.648	0.351	0.735	0.265	0.629	0.281	0.565	0.346
Orange	0.558	0.352	0.636	0.364	0.570	0.429	0.506	0.404
Brown	0.430	0.340	0.430	0.390	0.518	0.434	0.570	0.382
Yellow	0.498	0.412	0.557	0.442	0.479	0.520	0.438	0.472
Green	0.026	0.399	0.166	0.364	0.286	0.446	0.207	0.771
Blue	0.078	0.171	0.150	0.220	0.210	0.160	0.137	0.038
Light Blue	0.180	0.260	0.240	0.300	0.270	0.260	0.230	0.200
Purple	0.300	0.064	0.320	0.200	0.550	0.300	0.600	0.202

TABLE 1A TO APPENDIX TO PART 655, SUBPART F—DAYTIME LUMINANCE FACTORS (%) FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Daytime Luminance Factor (Y %) by ASTM Type					
	Types I, II, III and VI		Types IV, VII, and VIII		Type V	
	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
White	27	....	40	....	15	....
Red	2.5	12	3.0	15	2.5	11
Orange	14	30	12	30	7.0	25
Brown	4.0	9.0	1.0	6.0	1.0	9.0
Yellow	15	45	24	45	12	30
Green	3.0	9.0	3.0	12	2.5	11
Blue	1.0	10	1.0	10	1.0	10
Light Blue	12	40	18	40	8.0	25
Purple	2.0	10	2.0	10	2.0	10

TABLE 2 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE OF 0.33°, ENTRANCE ANGLE OF +5° AND CIE STANDARD ILLUMINANT A.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	*y*	*x*	*y*	*x*	*y*	*x*	*y*
White	0.475	0.452	0.360	0.415	0.392	0.370	0.515	0.409
Red	0.650	0.348	0.620	0.348	0.712	0.2550	0.735	0.265
Orange	0.595	0.405	0.565	0.405	0.613	0.355	0.643	0.355
Brown	0.595	0.405	0.540	0.405	0.570	0.365	0.643	0.355
Yellow	0.513	0.487	0.500	0.4700	0.545	0.425	0.572	0.425
Green	0.007	0.570	0.200	0.500	0.322	0.590	0.193	0.782
Blue	0.33	0.370	0.180	0.370	0.230	0.240	0.091	0.133
Light Blue	Chromaticity coordinates are yet to be determined.							

TABLE 2 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE OF 0.33°, ENTRANCE ANGLE OF +5° AND CIE STANDARD ILLUMINANT A.—Continued

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	*y*	*x*	*y*	*x*	*y*	*x*	*y*
Purple	Chromaticity coordinates are yet to be determined.							

Note: Materials used as High-Conspicuity, Retroreflective Traffic Signage Materials shall meet the requirements for Daytime Color Specification Limits, Daytime Luminance Factors and Nighttime Color Specification Limits for Fluorescent Retroreflective Material, as described in Tables 3, 3a, and 4, throughout the service life of the sign.

TABLE 3 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Fluorescent Orange	0.583	0.416	0.535	0.400	0.595	0.351	0.645	0.355
Fluorescent Yellow	0.479	0.520	0.446	0.483	0.512	0.421	0.557	0.442
Fluorescent Yellow-Green	0.387	0.610	0.369	.546	.428	.496	0.460	0.540
Fluorescent Green	0.210	0.770	0.232	0.656	0.320	0.590	0.320	0.675

TABLE 3A TO APPENDIX TO PART 655, SUBPART F—DAYTIME LUMINANCE FACTORS (%) FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Luminance Factor Limits (Y)		
	Min	Max	Y_F*
Fluorescent Orange	25	None	15
Fluorescent Yellow	45	None	20
Fluorescent Yellow-Green	60	None	20
Fluorescent Green	20	30	12

*Fluorescence luminance factors (YF) are typical values, and are provided for quality assurance purposes only. YF shall not be used as a measure of performance during service.

TABLE 4 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE OF 0.33°, ENTRANCE ANGLE OF +5° AND CIE STANDARD ILLUMINANT A.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Fluorescent Orange	0.625	0.375	0.589	0.376	0.636	0.330	0.669	0.331
Fluorescent Yellow	0.554	0.445	0.526	0.437	0.569	0.394	0.610	0.390
Fluorescent Yellow-Green	0.480	0.520	0.473	0.490	0.523	0.440	0.550	0.449
Fluorescent Green	0.007	0.570	0.200	0.500	0.322	0.590	0.193	0.782

TABLE 5 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	0.355	0.355	0.305	0.305	0.285	0.325	0.335	0.375
Yellow	0.560	0.440	0.490	0.510	0.420	0.440	0.460	0.400

TABLE 5 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.—Continued

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
Red	0.480	0.300	0.690	0.315	0.620	0.380	0.480	0.360
Blue	0.105	0.100	0.220	0.180	0.200	0.260	0.060	0.220

TABLE 5A TO PART 655, SUBPART F—DAYTIME LUMINANCE FACTORS (%) FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}.

Color	Luminance Factor (Y%)	
	Minimum	Maximum
White	35	
Yellow	25	
Red	6	15
Blue	5	14

TABLE 6 TO APPENDIX TO PART 655, SUBPART F—NIGHTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER, OBSERVATION ANGLE OF 1.05°, ENTRANCE ANGLE OF +88.76° AND CIE STANDARD ILLUMINANT A.

Color	Chromaticity Coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
White	0.480	0.410	0.430	0.380	0.405	0.405	0.455	0.435
Yellow	0.575	0.425	0.508	0.415	0.473	0.453	0.510	0.490

Note: Luminance factors for retroreflective pavement marking materials are for materials as they are intended to be used. For paint products, that means inclusion of glass beads and/or other retroreflective components.

[FR Doc. 02–19140 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–094]

Drawbridge Operation Regulations; Flagler Memorial, Atlantic Intracoastal Waterway, Palm Beach, Palm Beach County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a deviation from the regulations governing the operation of the new Flagler Memorial bridge across the Atlantic Intracoastal Waterway in Palm Beach, Florida. This deviation allows the drawbridge owner to only open one leaf of the bridge from 9:30 a.m. until 3:30 p.m., from July 29, 2002 until August 1, 2002 to complete emergency repairs to the bascule leaves.

DATES: This deviation is effective from 9:30 a.m. on, July 29, 2002 until 3:30 p.m. on August 1, 2002.

ADDRESSES: Material received from the public, as well as comments indicated in this preamble as being available in the docket, are part of docket [CGD07–02–094] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Branch at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Florida Department of Transportation requested on July 22, 2002, that the Coast Guard temporarily allow the Flagler Memorial bridge to only open a single leaf of the bridge from 9:30 a.m. until 3:30 p.m., from July 29, 2002 until August 1, 2002. This temporary deviation from the existing bridge regulations is necessary to effect emergency repairs to the bascule leaves. The Flagler Memorial bridge has a horizontal clearance of 40 feet between the fender and the single down span.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 to allow the owner to complete emergency repairs to the bascule leaves. Under this deviation, the Flagler Memorial bridge need only open a single leaf of the bridge from 9:30 a.m. until 3:30 p.m., from July 29, 2002 until August 1, 2002.

Dated: July 24, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–19356 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–02–091]

Drawbridge Operation Regulations: Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Dock Bridge, mile 5.0, across the Passaic River at Harrison, New Jersey. This temporary deviation will allow the bridge to remain closed to navigation from 9 p.m. on July 26, 2002 through 5 a.m. on July 29, 2002, and from 9 p.m. on August 2, 2002 through 5 a.m. on August 5, 2002. This temporary deviation is necessary to facilitate repairs at the bridge.

DATES: This deviation is effective from 9 p.m. on July 26, 2002 through 5 a.m. on August 5, 2002.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The bridge owner, National Passenger Railroad Corporation (Amtrak), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance, to install new miter rails, bridge blocks, and other general maintenance, at the bridge. The performance of these repairs require the bridge to remain in the closed position.

Although the bridge owner did not provide the required thirty days notice to the Coast Guard prior to the effective date of this temporary deviation, the Coast Guard has approved this deviation because this work must be performed with undue delay to insure continued safe reliable operation of the bridge.

Under this temporary deviation the Amtrak Dock Bridge may remain closed to vessel traffic from 9 p.m. on July 26, 2002 through 5 a.m. on July 29, 2002, and from 9 p.m. on August 2, 2002 through 5 a.m. on August 5, 2002.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: July 22, 2002.

V.S. Crea,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 02–19358 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–007]

RIN 2115–AA97

Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two permanent security zones on the navigable waters of Lake Michigan in the Captain of the Port Milwaukee Zone. These security zones are necessary to protect the nuclear power plants and water intake cribs from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. These zones are intended to restrict vessel traffic from a portion of Lake Michigan.

DATES: This rule is effective July 31, 2002.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207.

Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–007 and are available for inspection or copying at Marine Safety Office Milwaukee, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Chief David McClintock, U.S. Coast Guard Marine Safety Office Milwaukee, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 18, 2002, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan'' in the **Federal Register** (67 FR 19142). We received 14 letters and 2 petitions commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permanent security zones being established by this rulemaking are smaller in size than the temporary security zones currently in effect. By immediately implementing the smaller zone size, we will be relieving some of the burden placed on the public by a larger security zone.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, significant damage to the Pentagon, and tragic loss of life. National security and intelligence officials warn that future terrorists attacks are likely.

This regulation establishes two permanent security zones for the following facilities:

(1) Point Beach nuclear power plant, and

(2) Kewaunee nuclear power plant.

These security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Milwaukee, or his authorized representative, are prohibited from entering or moving within the zones. The Captain of the Port Milwaukee may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Milwaukee's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of these security zones, their exact locations, and the restrictions involved via Local Notice to Mariners and the Broadcast Notice to Mariners.

Discussion of Comments and Changes

During the public comment period, we received 14 letters. All expressed concern that the security zone would exclude fishermen from a good fishing area and that the security zone would do little to prevent acts of terrorism.

One letter was a form comment signed by 129 individuals stating that a no-fishing, no-boating zone, marked by buoys, will help to deter a terrorist attack. However, the ban will prevent fishermen from enjoying good fishing in that area. Another letter was a form comment signed by 145 individuals stating that the current level of security is sufficient and that they would like to see the area open to fishermen.

The Captain of the Port Milwaukee has carefully weighed security concerns versus public access in the decision to establish security zones. The security zones create a clear area in which unauthorized persons are readily detectable. This area, coupled with regular Coast Guard patrols, the assistance of state, local, and the nuclear power plant security personnel, all help to create an area to detect and respond to unauthorized individuals.

Thirteen comments indicated that recreational boaters are being deprived of good fishing areas and a beach area for families and tourists to enjoy. Due to the events of September 11, 2001, both nuclear power plants have already taken steps that prohibit access to beach and park areas. These steps include prohibiting beach and park access, posting signs, and regular roaming patrols. Nuclear plants are critical infrastructure throughout the country, providing electricity to millions of homes and cities. In addition, the plants pose a significant radiological hazard should their structural integrity be compromised. The Captain of the Port Milwaukee has determined that the best practice to ensure the safety of these facilities is to provide a clear area in which no vessels or persons are allowed access without specific permission from the Captain of the Port Milwaukee.

One comment was from a local charter boat captain who was concerned about the impact the security zones would have on the local charter fleet. The Captain of the Port Milwaukee has taken every step possible to minimize the impact of the permanent security zones by decreasing the size from that of the temporary security zone. The permanent security zone sizes were carefully considered and balance the safety and security of the facility versus access to the area. The permanent zone size, while smaller than the temporary zone size, continues to provide a clear area in which to detect persons or vessels while providing for traditional use around the security zones.

The Captain of the Port Milwaukee feels that this action is currently necessary until there is domestic security intelligence to indicate otherwise. As circumstances allow, the Captain of the Port Milwaukee may take steps to relieve the burden imposed on the public by allowing general access, reducing the zone size, or deactivating the security zones. However, this final rule remains unchanged from the proposed rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Our rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone. In addition, in the event that is may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Milwaukee to transit through the zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

§§ 165.T09–109 and 165T09–110 [Removed]

2. Remove §§ 165.T09–109 and 165.T09–110.

3. Add § 165.916 to read as follows:

§ 165.916 Security Zones; Captain of the Port Milwaukee Zone, Lake Michigan.

(a) *Location.* The following are security zones:

(1) *Kewaunee.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44° 20.647 N, 087° 31.980 W, then easterly to 44° 20.647 N, 087° 31.886 W, then southerly to 44° 20.391 N, 087° 31.866 W, then westerly to 44° 20.391 N, 087° 32.067 W, then northerly following the shoreline back to the point of origin. All coordinates are based upon North American Datum 1983.

(2) *Point Beach.* All navigable waters of Western Lake Michigan encompassed by a line commencing from a point on the shoreline at 44° 17.06 N, 087° 32.15 W, then northeasterly to 44° 17.12 N, 087° 31.59 W, then southeasterly to 44° 16.48 N, 087° 31.42 W, then southwesterly to 44° 16.42 N, 087° 32.02 W, then northwesterly along the shoreline back to the point of origin. All coordinates are based upon North American Datum 1983.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Milwaukee. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (414) 747–7155 or on VHF–FM Channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 19, 2002.

M.R. Devries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 02–19354 Filed 7–26–02; 4:02 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 02–008]

RIN 2115–AA97

Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is revising the effective period of a temporary safety zone in the Gulf of the Farallones, North Pacific Ocean, surrounding the site of a sunken freight vessel, JACOB LUCKENBACH, from which the Coast Guard and other government agencies are removing oil trapped inside the wreck. The purpose of this safety zone is to protect persons and vessels from hazards associated with oil removal operations. Persons and vessels are prohibited from entering into or transiting through the safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: The amendment to § 165.T11–082(c) in this rule is effective July 25, 2002. Section 165.T11–082, added at 67 FR 39600, June 10, 2002, effective from 11:59 p.m. PDT on May 14, 2002 to 11:59 p.m. PDT July 31, 2002, as amended in this rule, is extended in effect to 11:59 p.m. PDT on September 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 02–008] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Francisco Bay, Building 14, Coast Guard Island, Alameda, California 94501–5100 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ross Sargent, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 10, 2002, we published a temporary final rule (TFR) titled ''Safety Zone; North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA'' in the **Federal Register** (67 FR 39598) under § 165.T11–082. It has been in effect since May 14, 2002 and is set to expire 11:59 p.m. PDT on July 31, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. The original TFR was urgently required because once it was decided that oil removal was the most prudent means of protecting against future discharges from the sunken vessel, it was determined that publishing a NPRM and delaying the effective date of the safety zone would be contrary to the public interest. As of today, the need for this safety zone still exists because inclement weather has thwarted oil removal operations for several weeks and thus much of the oil has yet to be removed from the vessel. Accordingly, using the same rationale that was used for the original TFR, publishing a NPRM and delaying the effective date would be contrary to the public interest since the oil removal operations necessitating this safety zone would likely terminate before the rulemaking process was complete.

For the same reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

In November of 2001, the Coast Guard and other cognizant government agencies began receiving reports of oiled birds washing ashore along the California coastline between Monterey and Sonoma counties. Weeks of searching for surface sheens yielded negative results and prompted responding government agencies to consider sunken vessels in the area as possible sources of the contaminating oil. By February 2002, responding agencies identified the sunken freight vessel JACOB LUCKENBACH as the most probable source and began deploying camera-equipped remotely operated vehicles (ROVs) in order to view the sunken vessel. During this period, the Coast Guard learned that recreational and commercial divers had been diving on or were planning to dive on the sunken vessel while responding agencies were conducting the on-scene investigation. In February 2002, the Coast Guard established a temporary safety zone in the navigable waters surrounding the JACOB LUCKENBACH in order to protect persons and vessels from hazards associated with the investigation operations. That temporary safety zone expired at the end of April 2002.

The Coast Guard and other government agencies have reviewed the results of the investigation and have determined that removal of the oil from within the JACOB LUCKENBACH is the most prudent means of protecting against future oil discharges. Removal of the oil will require several surface and submersible vessels and associated equipment, all of which present hazards, particularly collision dangers, to persons and vessels in the area. As of today, the need for this safety zone still exists because inclement weather has thwarted oil removal operations for several weeks and thus much of the oil has yet to be removed from the vessel. This temporary final rule will extend this safety zone that was set to expire July 31, 2002 for 2 months—from July 31, 2002, to September 30, 2002.

Discussion of Rule

In order to continue facilitating safe oil removal operations and to guard against the possibility of an accidental discharge of a large quantity of oil into the environment, the Coast Guard is extending the current temporary safety zone in the navigable waters surrounding the sunken vessel. The safety zone encompasses all waters from the surface of the ocean to the bottom within a one nautical mile radius centered at 37°40.38′ N, 122°47.59′ W, the approximate position of the JACOB LUCKENBACH. Entry into, transit through or anchoring in this zone by persons, vessels or ROVs is prohibited, unless authorized by the Captain of the Port, or his designated representative. The requirements of this safety zone do not apply to deep draft vessels transiting within the Offshore Traffic Separation Scheme.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979). Due to the continued short duration and limited geographic scope of the safety zone, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. § 601–612), we must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

For these reasons and the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are establishing a safety zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.T11–082 to read as follows:

§ 165.T11–082 Safety Zone: North Pacific Ocean, Gulf of the Farallones, offshore of San Francisco, CA.

* * * * *

(c) *Effective period.* This section is effective at 11:59 p.m. PDT on May 14, 2002 and will terminate at 11:59 p.m. PDT on September 30, 2002. If the need for the safety zone ends prior to the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

* * * * *

Dated: July 25, 2002.

L. L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 02–19355 Filed 7–26–02; 4:03 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–155]

RIN 2115–AA97

Safety Zone: Vessel Launches, Bath Iron Works, Kennebec River, Bath, Maine

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a 150-yard radius safety zone around the Bath Iron Works facility dry dock in Bath, Maine to be activated when the dry dock is deployed and positioned in its dredged basin hole near the center of the Kennebec River. This safety zone is needed to protect the maritime community from the possible hazards to navigation associated with positioning a 700-foot dry dock near the center of the river to launch and recover large vessels.

DATES: This rule is effective August 1, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–01–155 and are available for inspection or copying at Marine Safety Office Portland, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 26, 2001, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Vessel Launches, Bath Iron Works, Kennebec River, Bath, ME'' in the **Federal Register** (66 FR 66380). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in the establishment of this rule would be contrary to the public interest as this safety zone is necessary immediately to ensure the safety of the maritime community during vessel launches currently scheduled for the beginning of August. Bath Iron Works has informed the Coast Guard that they will be using the dry dock several times in the near future, beginning August 2, 2002, as they complete work on several large vessels. It is necessary to make this rule effective in less than 30 days after publication in order to protect the maritime community from the possible hazards to navigation associated with positioning a 700-foot dry dock near the center of the Kennebec River to launch and recover large vessels.

Background and Purpose

The Bath Iron Works facility in Bath, Maine acquired a 700-foot dry dock to aid in vessel launchings and repairs. This dry dock needs to be pulled away from shore and placed in a dredged basin near the center of the Kennebec River, approximately 0.5 nm south of the new Bath-Woolwich Bridge and just to the east of Trufant Ledge, in order to submerge and be able to launch and recover vessels. To accomplish this a series of permanent anchors and submerged chains in the river is used. It is necessary to restrict vessel movement in this area during deployment to protect mariners from this system and any associated vessels involved with the deployment.

This rule establishes a permanent moving safety zone around the dry dock when it is being moved from its moored position at the Bath Iron Works facility to its deployed location in the dredged basin of the Kennebec River, and from its deployed location back to its mooring.

This rule also establishes a permanent safety zone around the dry dock while it is in its deployed position in the waters of the Kennebec River. This safety zone restricts entry into the waters of the Kennebec River within a 150-yard radius of the dry dock. This safety zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with positioning a 700-foot dry dock near the center of the Kennebec River to launch and recover large vessels.

Discussion of Comments and Changes

The Coast Guard received no comments for this rulemaking. Only one change has been made to the proposed rule in this final rulemaking. The NPRM for this rule proposed to redesignate 33 CFR § 165.103 as § 165.108 and designate this rule as § 165.103. The Coast Guard, in the interim, has revised § 165.103. Rather than moving and revising § 165.103 we will add a new section designated as § 165.104.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: This safety zone would only be activated when the dry dock is relocated to its launch and recovery position, and during vessel launch and recovery; the safety zone only restricts movement in a portion of the Kennebec River allowing vessels to safely navigate around the zone without delay; the maritime community will be notified of the restrictions via broadcast notice to mariners; and there will be advanced coordination of vessel traffic around the safety zone to minimize the effect on commercial vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we have considered whether this proposal would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under Regulatory Evaluation above, the Coast

Guard expects the impact of this regulation to be minimal and certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribe, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165 REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.104 to read as follows:

§ 165.104 Safety Zone: Vessel Launches, Bath Iron Works, Kennebec River, Bath, Maine.

(a) *Location.* The following is a safety zone: all waters of the Kennebec River within a 150-yard radius of the Bath Iron Works dry dock while it is being moved to and from its moored position at the Bath Iron Works Facility in Bath, Maine to a deployed position in the Kennebec River, and while launching or recovering vessels.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U. S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state and federal law enforcement vessels.

(c) *Notifications.* The Captain of the Port will notify the maritime community of periods during which this safety zone will be in effect by providing advance notice via Marine Safety Information Radio Broadcasts.

Dated: July 25, 2002.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 02–19357 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Prince William Sound 02–011]

RIN 2115–AA97

Security Zone: Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing the Trans-Alaska Pipeline (TAPS) Valdez Terminal Complex, Valdez, Alaska and TAPS Tank Vessels and a security zone in the Valdez Narrows, Port Valdez, Alaska. The security zones are necessary to protect the Alyeska Marine Terminal and Vessels from damage or injury from sabotage, destruction or other subversive acts. Entry of vessels into these security zones is prohibited unless specifically authorized by the Captain of the Port, Prince William Sound, Alaska.

DATES: This rule is effective from 8 a.m. July 30, 2002 until December 31, 2002. Comments and related material must reach the Coast Guard September 30, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Prince William Sound 02–011 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, PO Box 486, Valdez, Alaska 99686, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lt. Chris Beadle, U.S. Coast Guard Marine Safety Office Valdez, Alaska, (907) 835–7222.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In accordance with 5 U.S.C. 553 (b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of the national security interests in light of terrorist acts perpetrated on September 11, 2001. Also, in accordance with 5 U.S.C. 553 (d)(3), the Coast Guard finds good cause to exist for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of the TAPS terminal and TAPS tank vessels.

On November 7, 2001, we published three temporary final rules in the **Federal Register** (66 FR 56208, 56210, 56212) that created security zones effective through June 1, 2002. The section numbers and titles for these zones are—

§ 165.T17–003—Security zone; Trans-Alaska Pipeline Valdez Terminal Complex, Valdez, Alaska,
§ 165.T17–004—Security zone; Port Valdez, and § 165.T17–005—Security zones; Captain of the Port Zone, Prince William Sound, Alaska.

Then on June 4, 2002, we published a temporary final rule (67 FR 38389) that established security zones to replace these security zones that expired June 1, 2002. That rule issued in June, which will expire July 30, 2002, created temporary § 165.T17–009, entitled ''Port Valdez and Valdez Narrows, Valdez, Alaska''. This temporary rule will replace the § 165.T17–009 temporary security zones are only effective until July 30, 2002.

Discussion of the Rule

This temporary final rule establishes three security zones. The Trans-Alaska Pipeline (TAPS) Valdez Marine Terminal Security zone encompasses the waters of Port Valdez between Allison Creek to the east and Sawmill Spit to the west and offshore to marker buoys A and B (approximately 1.5 nautical miles offshore from the TAPS Terminal). The Tanker Moving Security Zone encompasses the waters within 200 yards of a TAPS Tanker within the Captain of the Port, Prince William Sound Zone. The Valdez Narrows Security Zone encompasses the waters 200 yards either side of the Tanker Optimum Trackline through Valdez Narrows between Entrance Island and Tongue Point. This zone is active only when a TAPS Tanker is in the zone. This temporary final rule reflects the changes to 33 CFR part 1701 submitted for regulatory review and publication as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. The Coast Guard has worked closely with local and regional users of Port Valdez and Valdez Narrows waterways to develop these security zones and the NPRM in order to mitigate the impact on commercial and recreational users. This temporary final rule establishes a uniform transition from the temporary operating zones while the NPRM is reviewed for publication.

Request for Comments

Although the Coast Guard has good cause in implementing this regulation without a notice of proposed rulemaking, we want to afford the maritime community the opportunity to participate in this rulemaking by submitting comments and related material regarding the size and boundaries of these security zones in order to minimize unnecessary burdens. If you do so, please include your name and address, identify the docket number for this rulemaking, COTP Prince William Sound 02–011, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary final rule in view of them.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Economic impact is expected to be minimal because of the short duration of this rule and the season in which it is in effect.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by this rule is expected to be minimal because of the short duration of the rule. Since the time frame this rule is in effect may cover commercial harvests of fish in the area, the entities most likely affected are commercial and native subsistence fishermen. The Captain of the Port will consider applications for entry into the security zone on a case-by-case basis; therefore, it is likely that very few, if any, small entities will be impacted by this rule. Those interested may apply for a permit to enter the zone by contacting Marine Safety Office, Valdez at the above contact number.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16745.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Vessels, Waterways.

For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T17–013 is added to read as follows:

§ 165.T17–013 Port Valdez and Valdez Narrows, Valdez, Alaska—security zones.

(a) The following areas are security zones —

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS Tank Vessels.* All enclosed waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°04′57″ N, 146°26′20″ W; thence northerly to 61°06′30″ N, 146°26′20″ W; thence east to 61°06′30″ N, 146°21′15″ W; thence south to 61°0′07″ N, 146°21′15″ W; thence west along the shoreline and including the area 2000 yards inland along the shoreline to the beginning point. This security zone encompasses all waters approximately 1 mile north, east and west of the TAPS Terminal between Allison Creek (61°05′07″ N, 146°21′15″ W) and Sawmill Spit (61°04′57″ N, 146°26′20″ W).

(2) *Tank Vessel Moving Security Zone.* All waters within 200 yards of any TAPS tank vessel maneuvering to approach, moor, unmoor or depart the TAPS Terminal or is transiting, maneuvering, laying to or anchored within the boundaries of the Captain of the Port, Prince William Sound Zone described in 33 CFR 3.85(b).

(3) *Valdez Narrows, Port Valdez, Valdez, Alaska.* All waters within 200 yards of the Valdez Narrows Tanker Optimum Track line bounded by a line beginning at 61°05′16.0″ N, 146°37′20.0″ W; thence south west to 61°04′00.0″ N, 146°39′52.0″ W; thence southerly to 61°02′33.5″ N, 146°41′28.0″ W; thence north west to 61°02′40.5″ N, 146°41′47.5″ W; thence north east to 61°04′06.0″ N, 146°40′14.5″ W; thence north east to 61°05′23.0″ N, 146°37′40.0″ W; thence south east back to the starting point at 61°05′16.0″ N, 146°37′20.0″.

(i) The Valdez Narrows Tanker Optimum Track line is a line commencing at 61°05′23.0″ N, 146°37′22.5″ W; thence south westerly to 61°04′03.2″ N, 146°40′03.2″ W; thence southerly to 61°03′00″ N, 146°41′12″ W.

(ii) This security zone encompasses all waters approximately 200 yards either side of the Valdez Narrows Optimum Track line.

(b) *Effective dates.* This section is effective from 8 a.m. July 30, 2002 until December 31, 2002.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 49 CFR 1.46, the authority for this section includes 33 U.S.C. 1226.

(d) *Regulations.* (1) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(2) Tank vessels transiting directly to the TAPS terminal complex, engaged in the movement of oil from the terminal or fuel to the terminal, and vessels used to provide assistance or support to the tank vessels directly transiting to the terminal, or to the terminal itself, and that have reported their movements to the Vessel Traffic Service may operate as necessary to ensure safe passage of tank vessels to and from the terminal.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port and the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

Dated: July 12, 2002.

M.A. Swanson,

Commander, Coast Guard, Captain of the Port, Prince William Sound, Alaska.

[FR Doc. 02–19359 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL21

Duty Periods; Inactive Duty for Training

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding service connection for disabilities incurred or aggravated during inactive duty for training. This amendment is necessary to insure the regulations accurately reflect a statutory amendment.

DATES: *Effective Date:* July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Randy A. McKevitt, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7138.

SUPPLEMENTARY INFORMATION: VA is amending its adjudication regulations regarding service connection for disabilities incurred or aggravated during inactive duty for training. The regulation amending 38 CFR 3.6 to implement Public Law 106–419, November 1, 2000, Veterans Benefits and Health Care Improvement Act of 2000, used wording slightly different from the wording of the Act. We are amending the regulation to accurately reflect the wording of the Act.

Administrative Procedure Act

We are publishing this as a final rule because the amendment only restates the statute and makes no substantive changes in the regulation. (5 U.S.C. 553).

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: July 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.6 is amended by:

A. Removing paragraphs (a)(1) through (a)(3).

B. In paragraph (a), removing ''a covered disease which occurred during such training. For purposes of this section, the term 'covered disease' is limited to-'', and adding, in its place, ''an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident which occurred during such training.''

C. Adding paragraph (e)(3) preceding the authority citation at the end of the section.

The addition reads as follows:

§ 3.6 Duty periods.

* * * * *

(e) * * *

(3) For purposes of this section, the term *covered disease* means any of the following:

(i) An acute myocardial infarction.

(ii) A cardiac arrest.

(iii) A cerebrovascular accident.

[FR Doc. 02–19329 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK67

Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to provide for payment of a monetary allowance for an individual with disability from one or more covered birth defects who is a child of a woman Vietnam veteran and to provide for the identification of covered birth defects, to implement recent legislation. In addition, this document amends the VA adjudication regulations affecting benefits for Vietnam veterans' children with spina bifida to reflect that legislation, to make conforming changes, and to remove unnecessary or obsolete provisions.

DATES: *Effective Date:* July 31, 2002.

Applicability Date: Benefits are payable in accordance with this rule retroactively to December 1, 2001, the effective date of the applicable statutory provisions.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on January 2, 2002 (67 FR 200), we proposed to amend the VA adjudication regulations to provide for payment of a monetary allowance for an individual with disability from one or more covered birth defects who is a child of a woman Vietnam veteran and to provide for the identification of covered birth defects, to implement provisions in recent legislation. In addition, we proposed to amend the VA adjudication regulations affecting benefits for Vietnam veterans' children with spina bifida to reflect that legislation, to make conforming changes, and to remove unnecessary or obsolete provisions. Companion proposed rule documents concerning the provision under that legislation of health care (RIN: 2900-AK88) (67 FR 209) and vocational training benefits (RIN: 2900-AK90) (67 FR 215) for eligible children of Vietnam veterans were also set forth in the January 2, 2002, issue of the **Federal Register**.

That legislation, section 401 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106–419, amended chapter 18 of title 38, United States Code, effective December 1, 2001, to authorize VA to provide certain benefits, including a monthly monetary allowance, for children with covered birth defects who are the natural children of women veterans who served in the Republic of Vietnam during the Vietnam era. We provided a thirty-day period for public comments, which ended on February 1, 2002. We received one comment, from an individual.

The commenter felt that the U.S. government is displaying a bias in favor of women veterans in this regulation and that the hidden effect of Agent Orange may also have remained dormant in men's systems and produced chromosomal disorders in their children. No changes are made based on this comment. Public Law 106–419, which was based on a comprehensive health study conducted by VA of 8,280 women Vietnam-era veterans (as discussed in the SUPPLEMENTARY INFORMATION section of the proposed rule), provides benefits specifically for women Vietnam veterans' children with certain birth defects. We have no legal authority to award the new benefits to children of male Vietnam veterans.

VA appreciates the comment submitted in response to the proposed rule. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change, except for nonsubstantive changes for purposes of clarity.

Administrative Procedure Act

Because this rule solely provides for new benefits and makes nonsubstantive changes, there is under 5 U.S.C. 553 no need for a 30-day delay of the effective date of this rule.

Applicability Date

Benefits are payable retroactively in accordance with this rule to December 1, 2001, the effective date of the new benefit programs enacted by section 401 of Public Law 106–419.

Paperwork Reduction Act of 1995

This rule removes the approved information collection provisions contained in 38 CFR 3.814 as unnecessary or obsolete. This rule contains no provisions constituting new collections of information under the Paperwork Reduction Act.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments will not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers for benefits affected by this rule are 64.104, 64.109, 64.127, and 64.128.

There are no Catalog of Federal Domestic Assistance program numbers for other benefits affected by this rule. 2

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 13, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.27, paragraphs (c) and (d) are revised to read as follows:

§ 3.27 Automatic adjustment of benefit rates.

* * * * *

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance rates under 38 U.S.C. chapter 18.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

(d) *Publishing requirements.* Increases in pension rates, parents' dependency and indemnity compensation rates and income limitation, and the monthly allowance rates under 38 U.S.C. chapter 18 made under this section shall be published in the **Federal Register**.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312(c)(1))

3. In § 3.29, paragraph (c) is revised to read as follows:

§ 3.29 Rounding

* * * * *

(c) *Monthly rates under 38 U.S.C. chapter 18.* When increasing the monthly monetary allowance rates under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans, VA will round any resulting rate that is not an even dollar amount to the next higher dollar.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

§ 3.31 [Amended]

4. Section 3.31 is amended by:

a. In the introductory text, removing ''the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18 for an individual''.

b. In paragraph (c)(4)(ii), removing ''the monetary allowance for children suffering from spina bifida'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18''.

c. Revising the authority citation.

The revision reads as follows:

§ 3.31 Commencement of the period of payment.

* * * * *

(Authority: 38 U.S.C. 1822, 5111)

5. In § 3.105, paragraph (g) is revised to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(g) *Reduction in evaluation—monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Where a reduction or discontinuance of a monetary allowance currently being paid under 38 U.S.C. chapter 18 is considered warranted, VA will notify the beneficiary at his or her latest address of record of the proposed reduction, furnish detailed reasons therefor, and allow the beneficiary 60 days to present additional evidence to show that the monetary allowance should be continued at the present level. Unless otherwise provided in paragraph (i) of this section, if VA does not receive additional evidence within that period, it will take final rating action and reduce the award effective the last day of the month following 60 days from the date of notice to the beneficiary of the proposed reduction.

(Authority: 38 U.S.C. 1822, 5112(b)(6))

* * * * *

§ 3.114 [Amended]

6. Section 3.114 is amended by:

a. In the introductory text of paragraph (a), removing ''the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida'' each place it appears and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18 for an individual''.

b. Revising the authority citation at the end of paragraph (a).

The revision reads as follows:

§ 3.114 Change of law or Department of Veterans Affairs issue.

* * * * *

(Authority: 38 U.S.C. 1822, 5110(g))

* * * * *

§ 3.158 [Amended]

7. In § 3.158, paragraphs (a) and (c) are amended by removing ''1805'' and adding, in its place, ''chapter 18''.

§ 3.216 [Amended]

8. Section 3.216 is amended by:

a. Removing ''or the monetary allowance for a child suffering from spina bifida who is a child of a Vietnam veteran under § 3.814 of this part'' and adding, in its place, ''a monetary allowance under 38 U.S.C. chapter 18''.

b. Revising the authority citation.

The revision reads as follows:

§ 3.216 Mandatory disclosure of social security numbers.

* * * * *

(Authority: 38 U.S.C. 1822, 5101(c))

* * * * *

9. In § 3.261, paragraph (a)(40) is revised to read as follows:

§ 3.261 Character of income; exclusions and estates.

* * * * *

(a) * * *

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
* *	*	*	*	*	*
(40) Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans (38 U.S.C. 1823(c)).	Excluded	Excluded	Excluded	Excluded	§ 3.262(y)

* * * * *

10. In § 3.262, paragraph (y) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(y) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from income computation any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is the child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

11. In § 3.263, paragraph (g) is revised to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(g) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

12. In § 3.272, paragraph (u) is revised to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(u) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

13. In § 3.275, paragraph (i) is revised to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(i) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* There shall be excluded from the corpus of estate or net worth of a claimant any allowance paid under the provisions of 38 U.S.C. chapter 18 to or for an individual who is a child of a Vietnam veteran.

(Authority: 38 U.S.C. 1823(c))

14. In § 3.403, paragraph (b) is revised and paragraph (c) is added, to read as follows:

§ 3.403 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida who is a child of a Vietnam veteran.* An award of the monetary allowance under 38 U.S.C. 1805 to or for an individual suffering from spina bifida who is a child of a Vietnam veteran will be effective either date of birth if claim is received within one year of that date, or date of claim, but not earlier than October 1, 1997.

(Authority: 38 U.S.C. 1822, 5110; sec. 422(c), Pub. L. 104–204, 110 Stat. 2926)

(c) *Monetary allowance under 38 U.S.C. 1815 for an individual with covered birth defects who is a child of a woman Vietnam veteran.* Except as provided in § 3.114(a) or § 3.815(i), an award of the monetary allowance under 38 U.S.C. 1815 to or for an individual with one or more covered birth defects who is a child of a woman Vietnam veteran will be effective as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is latest.

(Authority: 38 U.S.C. 1815, 1822, 1824, 5110)

15. In § 3.503, paragraph (b) is revised to read as follows:

§ 3.503 Children.

* * * * *

(b) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* The effective date of discontinuance of the monthly allowance under 38 U.S.C. chapter 18 will be the last day of the month before the month in which the death of the individual occurred.

(Authority: 38 U.S.C. 1822, 5112(b))

16. Section 3.814 is amended by:

a. Revising the section heading.

b. Adding a heading to paragraph (a).

c. In paragraph (a), revising the first sentence and, in the second sentence, removing ''other related individual'' and adding, in its place, ''related person''.

d. Removing and reserving paragraph (b).

e. In paragraph (c)(1), removing ''an individual'' and adding, in its place, ''a person'' and removing ''individual's'' and adding, in its place, ''person's''.

f. In paragraph (c)(2), removing ''§ .3.204(a)(1), VA shall'' and adding, in its place, ''§ 3.204(a)(1), VA will'' and by removing ''an individual's biological father or mother is or was'' and adding, in its place, ''a person is the biological son or daughter of''.

g. Add a heading for paragraph (d).

h. Removing the authority citation at the end of paragraph (d).

i. In paragraph (e) introductory text, removing ''children'' and adding, in its place, ''an individual''.

j. Revising the authority citation at the end of the section.

k. Removing the information collection parenthetical at the end of the section.

The revisions and additions read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

(a) *Monthly monetary allowance.* VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran. * * *

* * * * *

(d) *Disability evaluations.* (1) * * *

* * * * *

(Authority: 38 U.S.C. 501, 1805, 1811, 1812, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

17. Section 3.815 is added to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.

(a) *Monthly monetary allowance.* (1) *General.* VA will pay a monthly monetary allowance under subchapter II of 38 U.S.C. chapter 18 to or for an individual whose biological mother is or was a Vietnam veteran and who VA has determined to have disability resulting from one or more covered birth defects. Except as provided in paragraph (a)(3) of this section, the amount of the monetary allowance paid will be based upon the level of such disability suffered by the individual, as determined in accordance with the provisions of paragraph (e) of this section.

(2) *Affirmative evidence of cause other than mother's service during Vietnam era.* No monetary allowance will be provided under this section based on a particular birth defect of an individual in any case where affirmative evidence establishes that the birth defect results from a cause other than the active military, naval, or air service of the individual's mother during the Vietnam era and, in determining the level of disability for an individual with more than one birth defect, the particular defect resulting from other causes will be excluded from consideration. This will not prevent VA from paying a monetary allowance under this section for other birth defects.

(3) *Nonduplication; spina bifida.* In the case of an individual whose only covered birth defect is spina bifida, a monetary allowance will be paid under § 3.814, and not under this section, nor will the individual be evaluated for disability under this section. In the case of an individual who has spina bifida and one or more additional covered birth defects, a monetary allowance will be paid under this section and the amount of the monetary allowance will be not less than the amount the individual would receive if his or her only covered birth defect were spina bifida. If, but for the individual's one or more additional covered birth defects, the monetary allowance payable to or for the individual would be based on an evaluation at Level I, II, or III, respectively, under § 3.814(d), the evaluation of the individual's level of disability under paragraph (e) of this section will be not less than Level II, III, or IV, respectively.

(b) *No effect on other VA benefits.* Receipt of a monetary allowance under 38 U.S.C. chapter 18 will not affect the right of the individual, or the right of any person based on the individual's relationship to that person, to receive any other benefit to which the individual, or that person, may be entitled under any law administered by VA.

(c) *Definitions.* (1) *Vietnam veteran.* For the purposes of this section, the term *Vietnam veteran* means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, without regard to the characterization of the person's service. Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Individual.* For the purposes of this section, the term individual means a person, regardless of age or marital status, whose biological mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first entered the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975. Notwithstanding the provisions of § 3.204(a)(1), VA will require the types of evidence specified in §§ 3.209 and 3.210 sufficient to establish that a person is the biological son or daughter of a Vietnam veteran.

(3) *Covered birth defect.* For the purposes of this section, the term *covered birth defect* means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term *covered birth defect* does not include a condition due to a:

(i) Familial disorder;
(ii) Birth-related injury; or
(iii) Fetal or neonatal infirmity with well-established causes.

(d) *Identification of covered birth defects.* All birth defects that are not excluded under the provisions of this paragraph are covered birth defects.

(1) Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

(i) Achondroplasia;
(ii) Cleft lip and cleft palate;
(iii) Congenital heart disease;
(iv) Congenital talipes equinovarus (clubfoot);
(v) Esophageal and intestinal atresia;
(vi) Hallerman-Streiff syndrome;
(vii) Hip dysplasia;
(viii) Hirschprung's disease (congenital megacolon);
(ix) Hydrocephalus due to aqueductal stenosis;
(x) Hypospadias;
(xi) Imperforate anus;
(xii) Neural tube defects (including spina bifida, encephalocele, and anencephaly);
(xiii) Poland syndrome;
(xiv) Pyloric stenosis;
(xv) Syndactyly (fused digits);
(xvi) Tracheoesophageal fistula;
(xvii) Undescended testicle; and
(xviii) Williams syndrome.

(2) Birth defects that are familial disorders, including hereditary genetic conditions, are not covered birth defects. Familial disorders include, but are not limited to, the following, unless the birth defect is not familial in a particular family:

(i) Albinism;
(ii) Alpha-antitrypsin deficiency;
(iii) Crouzon syndrome;
(iv) Cystic fibrosis;
(v) Duchenne's muscular dystrophy;
(vi) Galactosemia;
(vii) Hemophilia;
(viii) Huntington's disease;
(ix) Hurler syndrome;
(x) Kartagener's syndrome (Primary Ciliary Dyskinesia);
(xi) Marfan syndrome;
(xii) Neurofibromatosis;
(xiii) Osteogenesis imperfecta;
(xiv) Pectus excavatum;
(xv) Phenylketonuria;
(xvi) Sickle cell disease;
(xvii) Tay-Sachs disease;
(xviii) Thalassemia; and
(xix) Wilson's disease.

(3) Conditions that are congenital malignant neoplasms are not covered birth defects. These include, but are not limited to, the following:

(i) Medulloblastoma;
(ii) Neuroblastoma;
(iii) Retinoblastoma;
(iv) Teratoma; and
(v) Wilm's tumor.

(4) Conditions that are chromosomal disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Down syndrome and other Trisomies;
(ii) Fragile X syndrome;
(iii) Klinefelter's syndrome; and

(iv) Turner's syndrome.

(5) Conditions that are due to birth-related injury are not covered birth defects. These include, but are not limited to, the following:

(i) Brain damage due to anoxia during or around time of birth;

(ii) Cerebral palsy due to birth trauma, (iii) Facial nerve palsy or other peripheral nerve injury;

(iv) Fractured clavicle; and

(v) Horner's syndrome due to forceful manipulation during birth.

(6) Conditions that are due to a fetal or neonatal infirmity with well-established causes or that are miscellaneous pediatric conditions are not covered birth defects. These include, but are not limited to, the following:

(i) Asthma and other allergies;

(ii) Effects of maternal infection during pregnancy, including but not limited to, maternal rubella, toxoplasmosis, or syphilis;

(iii) Fetal alcohol syndrome or fetal effects of maternal drug use;

(iv) Hyaline membrane disease;

(v) Maternal-infant blood incompatibility;

(vi) Neonatal infections;

(vii) Neonatal jaundice;

(viii) Post-infancy deafness/hearing impairment (onset after the age of one year);

(ix) Prematurity; and

(x) Refractive disorders of the eye.

(7) Conditions that are developmental disorders are not covered birth defects. These include, but are not limited to, the following:

(i) Attention deficit disorder;

(ii) Autism;

(iii) Epilepsy diagnosed after infancy (after the age of one year);

(iv) Learning disorders; and

(v) Mental retardation (unless part of a syndrome that is a covered birth defect).

(8) Conditions that do not result in permanent physical or mental disability are not covered birth defects. These include, but are not limited to:

(i) Conditions rendered non-disabling through treatment;

(ii) Congenital heart problems surgically corrected or resolved without disabling residuals;

(iii) Heart murmurs unassociated with a diagnosed cardiac abnormality;

(iv) Hemangiomas that have resolved with or without treatment; and

(v) Scars (other than of the head, face, or neck) as the only residual of corrective surgery for birth defects.

(e) *Disability evaluations.* Whenever VA determines, upon receipt of competent medical evidence, that an individual has one or more covered birth defects, VA will determine the level of disability currently resulting, in combination, from the covered birth defects and associated disabilities. No monetary allowance will be payable under this section if VA determines under this paragraph that an individual has no current disability resulting from the covered birth defects, unless VA determines that the provisions of paragraph (a)(3) of this section are for application. Except as otherwise provided in paragraph (a)(3) of this section, VA will determine the level of disability as follows:

(1) *Levels of disability.*

(i) *Level 0.* The individual has no current disability resulting from covered birth defects.

(ii) *Level I.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that only occasionally or intermittently limit or prevent some daily activities; or

(B) The individual has disfigurement or scarring of the head, face, or neck without gross distortion or gross asymmetry of any facial feature (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iii) *Level II.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent some daily activities, but the individual is able to work or attend school, carry out most household chores, travel, and provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene, and communication, behavior, social interaction, and intellectual functioning are appropriate for age; or

(B) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of one facial feature or one paired set of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(iv) *Level III.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that frequently or constantly limit or prevent most daily activities, but the individual is able to provide age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual is unable to work or attend school, travel, or carry out household chores, or does so intermittently and with difficulty;

(C) The individual's communication, behavior, social interaction, and intellectual functioning are not entirely appropriate for age; or

(D) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of two facial features or two paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(v) *Level IV.* The individual meets one or more of the following criteria:

(A) The individual has residual physical or mental effects that prevent age-appropriate self-care, such as eating, dressing, grooming, and carrying out personal hygiene;

(B) The individual's communication, behavior, social interaction, and intellectual functioning are grossly inappropriate for age; or

(C) The individual has disfigurement or scarring of the head, face, or neck with either gross distortion or gross asymmetry of three facial features or three paired sets of facial features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, or lips).

(2) *Assessing limitation of daily activities.* Physical or mental effects on the following functions are to be considered in assessing limitation of daily activities:

(i) Mobility (ability to stand and walk, including balance and coordination);

(ii) Manual dexterity;

(iii) Stamina;

(iv) Speech;

(v) Hearing;

(vi) Vision (other than correctable refraction errors);

(vii) Memory;

(viii) Ability to concentrate;

(ix) Appropriateness of behavior; and

(x) Urinary and fecal continence.

(f) *Information for determining whether individuals have covered birth defects and rating disability levels.* (1) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purposes of determining whether an individual has a covered birth defect and for rating claims for covered birth defects. If they are adequate for such purposes, VA may make the determination and rating without further examination. In the absence of adequate information, VA may schedule examinations for the purpose of determining whether an individual has a covered birth defect and/or assessing the level of disability.

(2) Except in accordance with paragraph (a)(3) of this section, VA will not pay a monthly monetary allowance unless or until VA is able to obtain medical evidence adequate to determine that an individual has a covered birth defect and adequate to assess the level of disability due to covered birth defects.

(g) *Redeterminations.* VA will reassess a determination under this section whenever it receives evidence indicating that a change is warranted.

(h) *Referrals.* If a regional office is unclear in any case as to whether a condition is a covered birth defect, it may refer the issue to the Director of the Compensation and Pension Service for determination.

(i) *Effective dates.* Except as provided in § 3.114(a) or paragraph (i)(1) or (2) of this section, VA will award the monetary allowance under subchapter II of 38 U.S.C. chapter 18, for an individual with disability resulting from one or more covered birth defects, based on an original claim, a claim reopened after final disallowance, or a claim for increase, as of the date VA received the claim (or the date of birth if the claim is received within one year of that date), the date entitlement arose, or December 1, 2001, whichever is latest. Subject to the condition that no benefits may be paid for any period prior to December 1, 2001:

(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.

(2) If a claimant reopens a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.

(j) *Reductions and discontinuances.* VA will generally reduce or discontinue awards under subchapter II of 38 U.S.C. chapter 18 according to the facts found except as provided in §§ 3.105 and 3.114(b).

(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.

(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.

(Authority: 38 U.S.C. 501, 1811, 1812, 1813, 1814, 1815, 1816, 1821, 1822, 1823, 1824, 5101, 5110, 5111, 5112)

[FR Doc. 02–19328 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF00

Schedule for Rating Disabilities; the Skin

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the Skin. The intended effect of this action is to update the portion of the rating schedule that deals with skin to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: *Effective Date:* This amendment is effective August 30, 2002.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: As part of a comprehensive review of the rating schedule, VA published a proposal to amend 38 CFR 4.118, which addresses disabilities of the skin, in the **Federal Register** of January 19, 1993 (58 FR 4969). Comments were received from the American Legion, Paralyzed Veterans of America, Veterans of Foreign Wars, Disabled American Veterans, and VA employees.

One commenter suggested that VA withdraw the proposed regulations and reissue them based on more objective standards, and also made specific suggestions for changes to many diagnostic codes.

We do not agree that the proposed regulations should be withdrawn.

We made the process of revision as open as possible. For example, prior to publication of the proposed amendment, we published an advance notice of proposed rulemaking in the **Federal Register** to receive public comments about the revision. We also contracted with an outside consultant, who convened a panel of non-VA physician specialists in skin diseases to make recommendations for revisions of this section of the rating schedule. We asked the Veterans Health Administration to review our proposed changes. We published the proposed revision only after reviewing all of these sources of information. We received several other comments on the proposed rule after it was published in the **Federal Register**, but none of the commenters suggested withdrawing the proposed revision. In response to comments, we have however, made further revisions to some of the criteria for the sake of clarity and more objectivity and have added definitions and explanatory notes under some conditions. These added changes are discussed in more detail below. The same commenter who suggested withdrawing the proposed revision also made specific suggestions for changes to many diagnostic codes. With the additional changes we have made in the final revision, we believe we have made the evaluation criteria for skin conditions reasonably clear and objective.

Under diagnostic code (DC) 7800, disfigurement of the head, face, or neck, the former rating schedule provided evaluation levels of 50, 30, 10, and zero percent based on whether there is repugnant deformity of one or both sides of the face, whether the disfigurement is ‘‘severe,’’ producing a marked and unsightly deformity of eyelids, lips, or auricles, and on whether the disfigurement is ‘‘moderate’’ or ‘‘slight.’’ Following these criteria was a note stating that each level could be increased to the next higher evaluation level on the basis of marked discoloration or color contrast and that the most repugnant, disfiguring conditions, including scars and diseases of the skin, could be submitted with photographs for central office rating. The proposed amendment added an 80-percent evaluation level and deleted the part of the note that provided authority to elevate evaluations in the presence of marked discoloration or color contrast based on the rationale that these criteria are subject to inconsistent interpretations. The proposed evaluation criteria were based at 80 percent on whether disfigurement is so disfiguring as to preclude occupational interaction with the public, at 50 percent on whether it is repugnant on casual inspection, at 30 percent on whether it is disagreeable on casual inspection, at 10 percent on whether it is noticeable on casual inspection, and at zero percent on whether it is noticeable, but only on close inspection.

One commenter felt that the deleted note should be retained. Another commenter, while offering no alternative language for us to consider, stated that the words ‘‘repugnant,’’ disagreeable,’’ and ‘‘noticeable,’’ used to describe degrees of disfigurement, are too subjective to be useful and are not based on medical criteria. In a similar vein, another commenter said that we should establish objective criteria for rating scars that should include evaluation of size, configuration, color, etc. One commenter felt that the difference between casual and close inspection, part of the criteria used to determine disfigurement, is a distinction that is difficult to understand.

In response to these comments, we have further revised the evaluation criteria for DC 7800 by basing them on the number of objective characteristics of disfigurement that are present and whether there is asymmetry or gross distortion of the features. We provided a new note following DC 7800 describing the eight specific characteristics of disfigurement, for purposes of evaluation under § 4.118: Scar 5 or more inches (13 or more cm.) in length; scar at least one-quarter inch (0.6 cm.) wide at widest part; surface contour of scar elevated or depressed on palpation; scar adherent to underlying tissue; skin hypo- or hyper-pigmented in an area exceeding six square inches (39 sq. cm.); skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 sq. cm.); underlying soft tissue missing in an area exceeding six square inches (39 sq. cm.); and skin indurated and inflexible in an area exceeding six square inches (39 sq. cm.). For an 80-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of three or more features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or six or more characteristics of disfigurement must be present. For a 50-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of two features or paired sets of features, or four or more characteristics of disfigurement must be present. For a 30-percent evaluation, there must be visible or palpable tissue loss and either gross distortion or asymmetry of one feature or set of paired features, or two or three characteristics of disfigurement must be present. For a 10-percent evaluation, one characteristic of disfigurement must be present. In our judgment, these further revised criteria are sufficiently clear and objective to assure that evaluations take into account the most significant characteristics of disfigurement and will be consistent from veteran to veteran. We have provided two additional notes under DC 7800, one directing the rater to rate tissue loss of the auricle under DC 6207 (loss of auricle) and anatomical loss of the eye under DC 6061 (anatomical loss of both eyes) or DC 6063 (anatomical loss of one eye), as appropriate; and the second directing the rater to take into consideration unretouched color photographs.

The former rating schedule designated DC 7801 as ''scars, burns, third degree,'' and DC 7802 as ''scars, burns, second degree.'' We proposed to revise these codes so that they additionally addressed scars from causes other than burns and so that the conditions would be evaluated based on actual residual disability, i.e., the size of the area of underlying soft tissue damage or limitation of motion, rather than on the initial assessment of the severity of a burn. We proposed to redesignate DC 7801 as ''scars, other than head, face, or neck, with underlying soft tissue damage causing deep contour defect or limited motion'' and DC 7802 as ''scars, other than head, face, or neck, that are superficial and that do not cause limited motion.'' We proposed that under DC 7801 scars with an area or areas exceeding 144 square inches (929 sq. cm.) receive a 40-percent evaluation; with area or areas exceeding 72 square inches (465 sq. cm.) a 30-percent evaluation; with area or areas exceeding 12 square inches (77 sq. cm.) a 20-percent evaluation; and with area or areas exceeding 6 square inches (39 sq. cm.) a 10-percent evaluation. We proposed that under DC 7802 scars with area or areas approximating 144 square inches (929 sq. cm.) receive a 10-percent evaluation. A commenter felt that historical precedent requires continuation of the wording ''third degree'' and ''second degree'' under DC's 7801 and 7802, formerly burn scars.

We disagree. One objective of the rating schedule revision is to incorporate medical advances and to delete obsolete concepts and conditions. Our consultants, a panel of non-VA physician specialists in skin diseases, as well as medical textbooks such as ''Christopher's Textbook of Surgery'' 140–41 (Loyal Davis, M.D., ed., 9th ed. 1968), indicate that the clinical estimation of the degree of a burn is not always accurate and does not necessarily relate to long-term disability. The severity of residual scarring from burns of all depths varies. Furthermore, burn scars that are not caused by thermal injury, but by chemical, electrical, or friction injury, as well as scars resulting from non-burn injuries that permanently alter the skin, can lead to comparable residuals. For these reasons, a determination of disability that is based on the extent of the scarring itself and its effects, rather than on the etiology of the scarring, is preferable because it will result in wider application of these criteria and afford consistency in the evaluation of comparable scarring, whatever the etiology. For more clarity and consistency of language, we have, however, modified the titles slightly, for better differentiation of superficial and deep scars, as discussed below.

We proposed that DC 7801 (formerly titled ''scars, burns, third degree'') be retitled ''scars, other than head, face, or neck, with underlying soft tissue damage causing deep contour defect or limited motion.'' According to one commenter, the term ''deep contour defect'' is confusing. When there is soft tissue damage beneath the skin, in addition to scarring of the skin, the overlying scar shows a greater anatomical change in contour than when there is skin damage alone. The defect that appears in a scarred area when there is underlying soft tissue damage is known as a deep contour defect and could also be called a deep scar. The lesser change that results in a scarred area when there is skin damage alone, without soft tissue damage beneath the skin, is known as a superficial contour defect and could also be called a superficial scar. A superficial scar may have an irregular surface that is either raised or depressed, but the abnormal contour goes no deeper than the skin. To make the distinction between the scars to be evaluated under DC's 7801 and 7802 clearer, we have removed the term ''deep contour defect'' and have retitled DC 7801 ''scars, other than head, face, or neck, that are deep or that cause limited motion'' and retitled DC 7802 ''scars, other than head, face, or neck, that are superficial and that do not cause limited motion.'' We have also added a definition of deep scar, as one associated with underlying soft tissue damage, in a note under DC 7801 and of superficial scar, as one not associated with underlying soft tissue damage, in a note under DC 7802.

We proposed to retitle DC 7803 (formerly titled ''scars, superficial, poorly nourished, with repeated ulceration'') ''scars, superficial, unstable with frequent loss of epidermal covering.'' One commenter felt that the meaning of ''unstable'' under DC 7803 is unclear, and wondered whether this means that the wound is infected or unhealed.

The term ''unstable'' in the title of DC 7803 does not imply a specific etiology but only indicates that there is frequent loss of covering of the skin over the scar. An unstable scar may result from a number of causes, including poor healing or infection. For further clarity, we have added a note under DC 7803 defining unstable scar as one where, for any reason, there is frequent loss of covering of skin over the scar. We have also removed the term ''with frequent loss of epidermal covering'' from the title and repeated the definition of superficial scar under this code.

One commenter suggested that we not repeat identical criteria when several different conditions are evaluated using the same criteria.

While it is feasible to use general rating formulas when related conditions are listed consecutively, we have repeated criteria under a number of diagnostic codes in this section for several reasons. First, conditions evaluated under identical criteria in this section are not consecutive diagnostic codes. The repetition of criteria will save time by eliminating the need to seek the appropriate evaluation criteria, lessen the chance of error by eliminating the need to search other pages of the rating schedule, and eliminate the ''double references'' that are present under some diagnostic codes (where the schedule says to see a certain diagnostic code and there is a reference under that diagnostic code to see yet another diagnostic code). Additionally, while rating specialists may readily locate the appropriate rating criteria, others who use the schedule may find it more difficult. While eliminating the repetition of criteria would save space, we believe that the advantages gained favor their repetition in this case. Where a general rating formula applies to several diagnostic codes that are listed consecutively, the proximity of the conditions and the rating formula eliminates most of the potential problems discussed above.

In the former schedule, DC 7806 (dermatitis or eczema) was evaluated at levels of 50, 30, 10, or zero percent. The criteria called for a 50-percent evaluation for ulceration or extensive exfoliation or crusting, with systemic or nervous manifestations, or being exceptionally repugnant; a 30-percent evaluation for constant exudation or itching, with extensive lesions, or with marked disfigurement; a 10-percent evaluation for exfoliation, exudation or itching, if involving an exposed surface or extensive area; and a zero-percent evaluation for slight, if any, exfoliation, exudation or itching, if on a nonexposed surface or small area. DC's 7809 (discoid lupus erythematosus), 7815 (bullous disorders), 7816 (psoriasis), and 7817 (exfoliative dermatitis) did not include specific evaluation criteria, but were ordinarily rated as analogous conditions, using the same criteria as for DC 7806. We proposed to evaluate all five of these conditions, plus four new conditions-cutaneous manifestations of collagen-vascular diseases not listed elsewhere (DC 7821), papulosquamous disorders not listed elsewhere (DC 7822), vitiligo (DC 7823), and diseases of keratinization (DC 7824)—under identical criteria, with evaluation levels of 100, 50, 30, 10, and zero percent. We proposed a 100-percent evaluation for generalized scaling, crusting, systemic manifestations, pruritus and for being so disfiguring as to preclude interaction with the public; a 50-percent evaluation for ulceration or extensive exfoliation or crusting, and systemic manifestations, or being so disfiguring as to be repugnant on casual inspection; a 30-percent evaluation for exudation or constant itching, or extensive lesions, or being so disfiguring as to be disagreeable on casual inspection; a 10-percent evaluation for exfoliation, exudation, or itching, if involving an exposed surface or extensive area; and a zero-percent evaluation for minimal exfoliation, exudation or itching, if on a nonexposed surface or small area. We proposed to evaluate a second group of skin disorders-disfigurement of the head, face, or neck (DC 7800), acne (DC 7828), chloracne (DC 7829), scarring alopecia (DC 7830), and alopecia areata (DC 7831)—solely on the basis of disfigurement, as described above under the discussion of DC 7800, and made 80 percent the maximum evaluation for this group based on disfigurement that precludes occupational interaction with the public. There were several comments regarding similarities between the proposed criteria for a 100-percent evaluation for the first group (DC 7806 and conditions rated under the same criteria) and the criterion for an 80-percent evaluation for the second group (DC 7800 and conditions rated under the same criteria).

One commenter objected to the fact that when interaction with the public is precluded, one group of skin conditions may be assigned an evaluation of 100 percent and another group may be assigned no more than 80 percent. Another commenter suggested that we add an intermediate evaluation level between 50 and 100 percent for the skin conditions for which we proposed evaluation levels of 100, 50, 30, 10, and zero percent. An evaluation of 60 percent or more for a single disability would allow a veteran to advance a claim under 38 CFR 4.16(a), which allows a claim for individual unemployability in cases where there is a service-connected disability rating that is less than total but which renders an individual unable to secure or follow a substantially gainful occupation.

In response to these comments, and because the more specific criteria we have provided for DC 7800 are not as readily applicable to other skin conditions as those we proposed, we have further revised the criteria for DC's 7806, 7809, 7815, 7816, 7817, 7821, 7822, 7823, and 7824. We have removed the proposed criteria, which were the same for all these conditions and have provided criteria that are more objective and more specific for each condition.

For dermatitis or eczema, DC 7806, instead of the proposed evaluation levels of 100, 50, 30, 10, and zero percent based on the presence of scaling, crusting, whether there are systemic manifestations, itching, exudation, exfoliation, etc., or, alternatively, on the extent of disfigurement, we have now provided evaluation levels of 60, 30, 10, and zero percent, as the commenter suggested. As part of the more condition-specific criteria we have provided, we have also removed the 100-percent evaluation level because dermatitis is rarely totally disabling. However, since a 60-percent evaluation level may now be assigned, a claim for individual unemployability, when appropriate, is feasible under 38 CFR 4.16 (a) for those individuals unable to secure or follow a substantially gainful occupation as a result of service-connected skin disease. The criteria are based on the extent (in percentage) to which the entire body or exposed areas are affected by the condition or on the treatment required. For a 60-percent evaluation for dermatitis, more than 40 percent of the entire body or more than 40 percent of exposed areas must be affected, or constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs is required. For a 30-percent evaluation, 20 to 40 percent of the entire body or 20 to 40 percent of exposed areas must be affected, or systemic therapy for a total duration of six weeks or more, but not constantly, during the past 12-month period is required. For a 10-percent evaluation, at least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas must be affected, or intermittent systemic therapy for a total duration of less than six weeks during the past 12-month period is required. For a zero-percent evaluation, less than 5 percent of the entire body or less than 5 percent of exposed areas must be affected, with no more than topical therapy required during the past 12-month period. We also added an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. This will provide an alternative means of evaluation in cases, for example, where the active disease has been controlled but there are significant residuals, such as scarring. These criteria are much more objective than the proposed criteria and will assure more consistent evaluations.

We had proposed criteria identical to those for DC 7806 for DC's 7815 (Bullous disorders (including pemphigus vulgaris, pemphigus foliaceous, bullous pemphigoid, dermatitis herpetiformis, epidermolysis bullosa acquisita, benign chronic familial pemphigus (Hailey-Hailey), and porphyria cutanea tarda)); 7816 (Psoriasis); 7821 (Cutaneous manifestations of collagen-vascular diseases not listed elsewhere (including scleroderma, calcinosis cutis, and dermatomyositis)); and 7822 (Papulosquamous disorders not listed elsewhere (including lichen planus, large or small plaque parapsoriasis, pityriasis lichenoides et varioliformis acuta (PLEVA), lymphomatoid papulosus, and pityriasis rubra pilaris (PRP))). The further revised evaluation criteria we have provided for DC 7806 remain appropriate for those four conditions, and we have provided identical criteria under each diagnostic code.

We also proposed to provide evaluation criteria identical to those for DC 7806 for the evaluation of DC's 7809 (Discoid lupus erythematosus or subacute cutaneous lupus erythematosus), 7817 (Exfoliative dermatitis (erythroderma)), 7823 (Vitiligo), and 7824 (Diseases of keratinization). However, the proposed criteria were not specific enough to these conditions to assure consistent evaluations, and the revised criteria for DC 7806 are also not appropriate for their evaluation. We have therefore provided more disease-specific evaluation criteria for these conditions, and also revised the evaluation levels in order to make them appropriate for the usual range of severity of each individual condition. The evaluation criteria for each of these conditions is discussed in more detail below.

Discoid lupus erythematosus (DC 7809) can present in a number of different ways (scaling, plaques, atrophy, erythema, scars, etc.), and we have therefore directed that it be rated as disfigurement (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.

Exfoliative dermatitis (DC 7817) is a disease that may be very severe, and its treatment is different from that of most other skin conditions. It may require the use of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy. It may also be associated with systemic manifestations, such as fever, weight loss, and hypoproteinemia (low level of protein in the blood, often associated with edema). We have provided evaluation levels of 100, 60, 30, 10, and zero percent for this condition, based on the extent of involvement of the skin, whether there are also systemic manifestations, and the type and duration of treatment. For a 100-percent evaluation, generalized involvement of the skin, plus systemic manifestations (such as fever, weight loss, and hypoproteinemia) must be present, and constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy during the past 12-month period is required. For a 60-percent evaluation, generalized involvement of the skin without systemic manifestations must be present, and constant or near-constant systemic therapy during the past 12-month period is required. For a 30-percent evaluation, there can be any extent of involvement of the skin, and systemic therapy for a total duration of six weeks or more, but not constantly, during the past 12-month period is required. For a 10-percent evaluation, there can be any extent of involvement of the skin, and systemic therapy for a total duration of less than six weeks during the past 12-month period is required. For a zero-percent evaluation, there can be any extent of involvement of the skin with no more than topical therapy required during the past 12-month period. These criteria are specific to this condition and are more objective than the proposed criteria.

We proposed to evaluate vitiligo (DC 7823) under the same evaluation criteria as those we proposed for DC 7806 (dermatitis or eczema). Vitiligo is a condition in which the only abnormal finding is hypopigmented skin; the only treatment for it is cosmetic. The proposed criteria, however, included findings such as ulceration, itching, crusting, exfoliation, and systemic manifestations, none of which is specific to, or even occurs in, vitiligo. It is unlikely that an evaluation higher than zero percent could have been assigned for vitiligo using those criteria. Disfigurement was another of the proposed criteria under DC 7806. Of the characteristics of disfigurement described under DC 7800, only one—hypopigmentation—is present in vitiligo, and that is its only disabling effect. For one characteristic of disfigurement of the head, face, or neck under DC 7800, a 10-percent evaluation is assigned. We have therefore provided evaluation levels for vitiligo of ten and zero percent, providing ten percent if exposed areas are affected, and zero percent if they are not. These criteria will assure consistent evaluations for vitiligo, and they are internally consistent with the evaluations for disfigurement of the head, face, or neck, where the maximum evaluation based on the presence of hypopigmentation alone is 10 percent.

We also proposed to evaluate DC 7824, diseases of keratinization (including icthyoses, Darier's disease, and palmoplantar keratoderma) under the same evaluation criteria as those we proposed for DC 7806 (dermatitis or eczema). The further revised criteria for DC 7806 are not entirely appropriate for evaluating diseases of keratinization. We have therefore provided evaluation levels of 60, 30, 10, and zero percent for diseases of keratinization, based on requirements for therapy, the extent of cutaneous involvement, whether there are systemic manifestations, and whether the skin involvement is constant or episodic. A 60-percent evaluation requires either generalized cutaneous involvement or systemic manifestations and constant or near-constant systemic medication, such as immunosuppressive retinoids, during the past 12-month period. A 30-percent evaluation requires either generalized cutaneous involvement or systemic manifestations and intermittent systemic medication, such as immunosuppressive retinoids, for a total duration of six weeks or more, but not constantly, during the past 12-month period. A 10-percent evaluation requires localized or episodic cutaneous involvement and intermittent systemic medication, such as immunosuppressive retinoids, for a total duration of less than six weeks during the past 12-month period. A zero-percent evaluation is assigned if no more than topical therapy was required during the past 12-month period. These criteria are more appropriate for the evaluation of diseases of keratinization. In addition, we have added to the title some of the specific diseases that make up the category of diseases of keratinization-icthyoses, Darier's disease, and palmoplantar keratoderma.

Under the former schedule, leishmaniasis, both American (DC 7807) and Old World (DC 7808), were ordinarily evaluated under the same criteria as DC 7806 (eczema). We proposed to evaluate leishmaniasis as disfigurement, scars, or dermatitis, depending upon the predominant disability. One commenter suggested that we include evaluation criteria for systemic manifestations of the disease under these codes. In our judgment, there is no need to include criteria for the systemic forms of leishmaniasis here, because evaluation criteria for visceral leishmaniasis are provided under DC 6301, in the section of the rating schedule on infectious diseases, immune disorders and nutritional deficiencies (38 CFR 4.88b). However, as a reminder to rating specialists, we have added a note under each of these codes directing that non-cutaneous (visceral) leishmaniasis be evaluated under DC 6301 (visceral leishmaniasis).

In the former schedule and in the proposed rule, DC 7811 (tuberculosis luposa (lupus vulgaris), active or inactive) was directed to be rated under §§ 4.88b or 4.89. Section 4.88b was redesignated § 4.88c in a separate rulemaking, so we have corrected the reference under DC 7811 to codes to be used for the evaluation of tuberculosis of the skin to §§ 4.88c and 4.89.

Malignant neoplasms of the skin (DC 7818) were evaluated on scars, disfigurement, etc., on the extent of constitutional symptoms, and on physical impairment, in the former schedule. We proposed to evaluate based on impairment of function, disfigurement, or scars. One commenter stated that these criteria are inadequate for malignant melanoma because the condition is potentially lethal.

On further consideration, we have added a separate diagnostic code, 7833, to the rating schedule for malignant melanoma of the skin because it is a common malignancy and often behaves differently, particularly more aggressively, than other skin malignancies. All residuals that might occur from any skin malignancy can be evaluated under the proposed criteria for malignant neoplasms of the skin because ''impairment of function'' covers virtually any disability that might result, and we propose to provide the same evaluation criteria for malignant melanoma as for other skin malignancies. However, malignant melanoma, and at times other malignancies of the skin, may require a level of antineoplastic treatment that is similar to that used for internal malignancies. We have therefore added a note under DC's 7818 and 7833 stating that if a skin malignancy requires therapy that is comparable to that used for internal malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination subject to the provisions of 38 CFR 3.105(e). Those provisions require a 60-day notice before VA reduces an evaluation and an additional 60-day notice before the reduced evaluation takes effect. The revision requires a current examination to assure that all residuals are documented, and also offers the veteran more contemporaneous notice of any proposed action and expands the veteran's opportunity to present evidence showing that the proposed action should not be taken. If there has been no local recurrence or metastasis, evaluation will then be made on residuals. This will assure that the evaluation of these neoplasms, when they require treatment that is comparable to the treatment of internal malignancies, is commensurate with that type of treatment and is consistent with the method of evaluating malignancies in other systems. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply. Since we have provided a separate diagnostic code for malignant melanoma, we added to the title of malignant skin neoplasms (DC 7818) for clarity, ''other than malignant melanoma.''

We proposed to add urticaria to the rating schedule as DC 7825, with evaluation levels of 40, 20, and zero percent. We proposed to call for a 40-percent evaluation if there is either a need for regular immunosuppressive therapy or the presence of uncontrollable episodes despite therapy; a 20-percent evaluation if there is a need for frequent immunosuppressive therapy; and a zero-percent evaluation if the condition is occasional or asymptomatic. We received two comments about these criteria. One commenter said that urticaria should be evaluated at 60 percent if it is uncontrollable despite any therapy, and at 50 percent if it requires frequent treatment. The other said that urticaria should be evaluated higher than 40 percent if it is uncontrolled by systemic immunosuppressive therapy and that we should replace the words ''frequent,'' ''regular,'' and ''occasional'' with more objective criteria.

We agree that a higher level of evaluation is warranted and have therefore added a 60-percent evaluation level for urticaria when there are at least four debilitating episodes during the past 12-month period despite continuous immunosuppressive therapy. In conjunction with this change, we made the next lower evaluation level 30 percent instead of 40 percent, and based it on debilitating episodes occurring at least four times during the past 12-month period but requiring only intermittent systemic immunosuppressive therapy for control, and made the level below that 10 percent instead of 20 percent, and based it on recurrent episodes occurring at least four times during the past 12-month period and that respond to treatment with antihistamines or sympathomimetics. These evaluation levels are consistent with the ranges for other skin diseases, and these criteria respond to the comments by providing a higher evaluation level for the most severe cases of urticaria, and by providing more objective criteria. The more objective criteria will assure more consistent evaluations.

We proposed to add primary cutaneous vasculitis as DC 7826, to be evaluated on the basis of disfigurement, scars, or urticaria, depending upon the predominant disability. Because the revised evaluation criteria for disfigurement (DC 7800) and urticaria (DC 7825) are more specific to those conditions than the proposed criteria were, they are less appropriate for the evaluation of primary cutaneous vasculitis, which is a chronic, but episodic, condition. We have therefore provided a separate set of more objective criteria with evaluation levels of 60, 30, and 10 percent for primary cutaneous vasculitis, based on the frequency of debilitating episodes and the type and frequency of treatment. A 60-percent evaluation calls for recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy; a 30-percent evaluation calls for recurrent debilitating episodes occurring at least four times during the past 12-month period and requiring intermittent systemic immunosuppressive therapy for control; and a ten-percent evaluation calls for recurrent episodes occurring one to three times during the past 12-month period and requiring intermittent systemic immunosuppressive therapy for control. These criteria are more specific to this condition and will result in more consistent evaluations. We have also provided an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. These are consistent with the criteria recommended by our consultants.

Similarly, we proposed to add erythema multiforme (toxic epidermal necrolysis) as DC 7827, with evaluation based on disfigurement, scars, or urticaria, depending upon the predominant disability. Because the revised evaluation criteria for disfigurement (DC 7800) and urticaria (DC 7825) are more specific to those conditions than the proposed criteria were, they are less appropriate for the evaluation of erythema multiforme. We have therefore provided a separate set of more objective criteria for erythema multiforme, which is an episodic condition, with levels of 60, 30, and 10 percent, based on the frequency of debilitating episodes and the type and frequency of treatment. A 60-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period despite ongoing immunosuppressive therapy; a 30-percent evaluation calls for recurrent debilitating episodes at least four times during the past 12-month period despite ongoing immunosuppressive therapy; and a ten-percent evaluation calls for recurrent episodes that respond to treatment with antihistamines or sympathomimetics. We also provided an alternative direction to rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. These criteria are identical to the criteria for DC 7826, since both conditions are episodic and require similar treatment, and they are consistent with the criteria recommended by our consultants.

We proposed that acne (DC 7828) and chloracne (DC 7829), which have similar manifestations, be evaluated under the same criteria as DC 7800 (disfigurement of the head, face, or neck). One commenter suggested that acne on nonexposed areas may warrant a compensable evaluation if there are extensive painful cysts. The proposed criteria did not provide for a compensable evaluation for such manifestations.

We agree that acne involving nonexposed areas may be disabling, more because of the inflammatory aspects than the disfiguring aspects. We have therefore established evaluation criteria for acne and chloracne that are based on the extent of involvement by acne, its location, and whether it is deep or superficial. We have provided a 30-percent evaluation for deep acne (meaning deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck; a 10-percent evaluation for deep acne affecting less than 40 percent of the face and neck, or deep acne other than on the face and neck; and a zero-percent evaluation for superficial acne (comedones, papules, pustules, superficial cysts) of any extent. We have provided an alternative direction to rate acne and chloracne as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability. This change will allow more leeway in assessing which type of disability best represents the findings in a particular case of acne or chloracne.

We proposed to evaluate scarring alopecia (DC 7830) and alopecia areata (DC 7831) on the basis of disfigurement. One commenter suggested that the criteria for DC's 7830 and 7831 take into account the ability or inability to improve appearance with a hairpiece or wig. We have reconsidered the criteria for these types of alopecia in view of our changed disfigurement criteria, which are not appropriate for these conditions, and have provided evaluation criteria based instead on the extent of involvement by alopecia. We have provided evaluation levels of 20, 10, and zero percent for scarring alopecia and ten and zero percent for alopecia areata. These levels are commensurate with the range of disability these conditions produce, according to our contract consultant specialists, who reviewed the rating schedule and made recommendations for changes to help fulfill the goals of revising and updating the medical criteria. For scarring alopecia, which usually follows injury, infection, burns, etc., and shows tissue loss and scarring, we have provided a 20-percent evaluation if the condition affects more than 40 percent of the scalp; a 10-percent evaluation if it affects 20 to 40 percent of the scalp; and a zero-percent evaluation if it affects less than 20 percent of the scalp. For alopecia areata, where scarring and atrophic changes are not present, we have provided a 10-percent evaluation for generalized involvement of the body, and a zero-percent evaluation if the condition is limited to the scalp and face. These criteria are clear and objective and will assure consistency in evaluation. They do not take into account the potential improvement of appearance with a hairpiece or wig, which would require a subjective assessment, but are based instead on the objectively determinable effects of the condition and are consistent with the recommendations of our consultants.

We edited the language of the note regarding under painful superficial scars (DC 7804) for clarity, and the notes under DC's 7801 and 7802 regarding scars in widely separated areas for the same reason, but these are not substantive changes.

For more clarity and objectivity, we have revised the language in DC 7802 from ''area or areas approximating 144 square inches (929 sq. cm.)'' to ''area or areas of 144 square inches (929 sq. cm.) or greater.'' We revised the title of DC 7813, Dermatophytosis, to include ''(ringworm: of body, tinea corporis; of head, tinea capitis; of feet, tinea pedis; of beard area, tinea barbae; of nails, tinea unguium; of inguinal area (jock itch), tinea cruris)'' to clarify what is included.

VA appreciates the comments submitted in response to the proposed rule, which is now adopted with the amendments noted above.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: May 17, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

2. Section 4.118 is revised to read as follows:

§ 4.118 Schedule of ratings—skin.

	Rating
7800 Disfigurement of the head, face, or neck:	
With visible or palpable tissue loss and either gross distortion or asymmetry of three or more features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with six or more characteristics of disfigurement	80
With visible or palpable tissue loss and either gross distortion or asymmetry of two features or paired sets of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with four or five characteristics of disfigurement	50
With visible or palpable tissue loss and either gross distortion or asymmetry of one feature or paired set of features (nose, chin, forehead, eyes (including eyelids), ears (auricles), cheeks, lips), or; with two or three characteristics of disfigurement	30
With one characteristic of disfigurement	10
Note (1): The 8 characteristics of disfigurement, for purposes of evaluation under § 4.118, are:	
Scar 5 or more inches (13 or more cm.) in length.	
Scar at least one-quarter inch (0.6 cm.) wide at widest part.	
Surface contour of scar elevated or depressed on palpation.	
Scar adherent to underlying tissue.	
Skin hypo-or hyper-pigmented in an area exceeding six square inches (39 sq. cm.).	
Skin texture abnormal (irregular, atrophic, shiny, scaly, etc.) in an area exceeding six square inches (39 sq. cm.).	
Underlying soft tissue missing in an area exceeding six square inches (39 sq. cm.).	
Skin indurated and inflexible in an area exceeding six square inches (39 sq. cm.).	
Note (2): Rate tissue loss of the auricle under DC 6207 (loss of auricle) and anatomical loss of the eye under DC 6061 (anatomical loss of both eyes) or DC 6063 (anatomical loss of one eye), as appropriate.	
Note (3): Take into consideration unretouched color photographs when evaluating under these criteria.	
7801 Scars, other than head, face, or neck, that are deep or that cause limited motion:	
Area or areas exceeding 144 square inches (929 sq.cm.)	40
Area or areas exceeding 72 square inches (465 sq. cm.)	30
Area or areas exceeding 12 square inches (77 sq. cm.)	20
Area or areas exceeding 6 square inches (39 sq. cm.)	10
Note (1): Scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined in accordance with § 4.25 of this part.	
Note (2): A deep scar is one associated with underlying soft tissue damage.	
7802 Scars, other than head, face, or neck, that are superficial and that do not cause limited motion: Area or areas of 144 square inches (929 sq. cm.) or greater	10
Note (1): Scars in widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined in accordance with § 4.25 of this part.	
Note (2): A superficial scar is one not associated with underlying soft tissue damage.	
7803 Scars, superficial, unstable	10
Note (1): An unstable scar is one where, for any reason, there is frequent loss of covering of skin over the scar.	
Note (2): A superficial scar is one not associated with underlying soft tissue damage.	
7804 Scars, superficial, painful on examination	10
Note (1): A superficial scar is one not associated with underlying soft tissue damage.	
Note (2): In this case, a 10-percent evaluation will be assigned for a scar on the tip of a finger or toe even though amputation of the part would not warrant a compensable evaluation.	
(See § 4.68 of this part on the amputation rule.)	
7805 Scars, other; Rate on limitation of function of affected part.	
7806 Dermatitis or eczema.	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or less than 5 percent of exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7807 American (New World) leishmaniasis (mucocutaneous, espundia): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	

	Rating
Note: Evaluate non-cutaneous (visceral) leishmaniasis under DC 6301 (visceral leishmaniasis).	
7808 Old World leishmaniasis (cutaneous, Oriental sore): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
Note: Evaluate non-cutaneous (visceral) leishmaniasis under DC 6301 (visceral leishmaniasis).	
7809 Discoid lupus erythematosus or subacute cutaneous lupus erythematosus: Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability. Do not combine with ratings under DC 6350.	
7811 Tuberculosis luposa (lupus vulgaris), active or inactive: Rate under §§ 4.88c or 4.89, whichever is appropriate.	
7813 Dermatophytosis (ringworm: of body, tinea corporis; of head, tinea capitis; of feet, tinea pedis; of beard area, tinea barbae; of nails, tinea unguium; of inguinal area (jock itch), tinea cruris): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
7815 Bullous disorders (including pemphigus vulgaris, pemphigus foliaceous, bullous pemphigoid, dermatitis herpetiformis, epidermolysis bullosa acquisita, benign chronic familial pemphigus (Hailey-Hailey), and porphyria cutanea tarda):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7816 Psoriasis:	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7817 Exfoliative dermatitis (erythroderma):	
Generalized involvement of the skin, plus systemic manifestations (such as fever, weight loss, and hypoproteinemia), and; constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required during the past 12-month period	100
Generalized involvement of the skin without systemic manifestations, and; constant or near-constant systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required during the past 12-month period	60
Any extent of involvement of the skin, and; systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
Any extent of involvement of the skin, and; systemic therapy such as therapeutic doses of corticosteroids, immunosuppressive retinoids, PUVA (psoralen with long-wave ultraviolet-A light) or UVB (ultraviolet-B light) treatments, or electron beam therapy required for a total duration of less than six weeks during the past 12-month period	10
Any extent of involvement of the skin, and; no more than topical therapy required during the past 12-month period	0
7818 Malignant skin neoplasms (other than malignant melanoma): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or impairment of function.	
Note: If a skin malignancy requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, evaluation will then be made on residuals. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply.	
7819 Benign skin neoplasms: Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or impairment of function.	
7820 Infections of the skin not listed elsewhere (including bacterial, fungal, viral, treponemal and parasitic diseases): Rate as disfigurement of the head, face, or neck (DC 7800), scars (DC's 7801, 7802, 7803, 7804, or 7805), or dermatitis (DC 7806), depending upon the predominant disability.	
7821 Cutaneous manifestations of collagen-vascular diseases not listed elsewhere (including scleroderma, calcinosis cutis, and dermatomyositis):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, or; constant or near-constant systemic therapy such as corticosteroids or other immunosuppressive drugs required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30

	Rating
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; intermittent systemic therapy such as corticosteroids or other immunosuppressive drugs required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7822 Papulosquamous disorders not listed elsewhere (including lichen planus, large or small plaque parapsoriasis, pityriasis lichenoides et varioliformis acuta (PLEVA), lymphomatoid papulosus, and pityriasis rubra pilaris (PRP)):	
More than 40 percent of the entire body or more than 40 percent of exposed areas affected, and; constant or near-constant systemic medications or intensive light therapy required during the past 12-month period	60
20 to 40 percent of the entire body or 20 to 40 percent of exposed areas affected, or; systemic therapy or intensive light therapy required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
At least 5 percent, but less than 20 percent, of the entire body, or at least 5 percent, but less than 20 percent, of exposed areas affected, or; systemic therapy or intensive light therapy required for a total duration of less than six weeks during the past 12-month period	10
Less than 5 percent of the entire body or exposed areas affected, and; no more than topical therapy required during the past 12-month period	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7823 Vitiligo:	
With exposed areas affected	10
With no exposed areas affected	0
7824 Diseases of keratinization (including icthyoses, Darier's disease, and palmoplantar keratoderma):	
With either generalized cutaneous involvement or systemic manifestations, and; constant or near-constant systemic medication, such as immunosuppressive retinoids, required during the past 12-month period	60
With either generalized cutaneous involvement or systemic manifestations, and; intermittent systemic medication, such as immunosuppressive retinoids, required for a total duration of six weeks or more, but not constantly, during the past 12-month period	30
With localized or episodic cutaneous involvement and intermittent systemic medication, such as immunosuppressive retinoids, required for a total duration of less than six weeks during the past 12-month period	10
No more than topical therapy required during the past 12-month period	0
7825 Urticaria:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy	60
Recurrent debilitating episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	30
Recurrent episodes occurring at least four times during the past 12-month period, and; responding to treatment with antihistamines or sympathomimetics	10
7826 Vasculitis, primary cutaneous:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite continuous immunosuppressive therapy	60
Recurrent debilitating episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	30
Recurrent episodes occurring one to three times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy for control	10
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7827 Erythema multiforme; Toxic epidermal necrolysis:	
Recurrent debilitating episodes occurring at least four times during the past 12-month period despite ongoing immunosuppressive therapy	60
Recurrent episodes occurring at least four times during the past 12-month period, and; requiring intermittent systemic immunosuppressive therapy	30
Recurrent episodes occurring during the past 12-month period that respond to treatment with antihistamines or sympathomimetics, or; one to three episodes occurring during the past 12-month period requiring intermittent systemic immunosuppressive therapy	10
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7828 Acne:	
Deep acne (deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck	30
Deep acne (deep inflamed nodules and pus-filled cysts) affecting less than 40 percent of the face and neck, or; deep acne other than on the face and neck	10
Superficial acne (comedones, papules, pustules, superficial cysts) of any extent	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7829 Chloracne:	
Deep acne (deep inflamed nodules and pus-filled cysts) affecting 40 percent or more of the face and neck	30
Deep acne (deep inflamed nodules and pus-filled cysts) affecting less than 40 percent of the face and neck, or; deep acne other than on the face and neck	10
Superficial acne (comedones, papules, pustules, superficial cysts) of any extent	0
Or rate as disfigurement of the head, face, or neck (DC 7800) or scars (DC's 7801, 7802, 7803, 7804, or 7805), depending upon the predominant disability.	
7830 Scarring alopecia:	
Affecting more than 40 percent of the scalp	20

	Rating
Affecting 20 to 40 percent of the scalp	10
Affecting less than 20 percent of the scalp	0
7831 Alopecia areata:	
With loss of all body hair	10
With loss of hair limited to scalp and face	0
7832 Hyperhidrosis:	
Unable to handle paper or tools because of moisture, and unresponsive to therapy	30
Able to handle paper or tools after therapy	0
7833 Malignant melanoma: Rate as scars (DC's 7801, 7802, 7803, 7804, or 7805), disfigurement of the head, face, or neck (DC 7800), or impairment of function (under the appropriate body system).	
Note: If a skin malignancy requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the skin, or surgery more extensive than wide local excision, a 100-percent evaluation will be assigned from the date of onset of treatment, and will continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e). If there has been no local recurrence or metastasis, evaluation will then be made on residuals. If treatment is confined to the skin, the provisions for a 100-percent evaluation do not apply.	

(Authority: 38 U.S.C. 1155)

[FR Doc. 02–19331 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL25

Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters; Notice of Disagreement Requirement

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations of the Department of Veterans Affairs (VA) relating to attorney fees. We are removing the requirement that, in order for an agent or attorney to charge a fee for services provided in a case, there must have been a notice of disagreement filed in the case on or after November 18, 1988. This change is required by a statute enacted in December 2001.

DATES: *Effective Date:* December 27, 2001.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's Rules of Practice (38 CFR part 20) contain VA's regulations relating to attorney-fee matters.

The issues of whether and how much an agent or attorney may charge for services provided in a case involving a claim for veterans' benefits have always been highly regulated by Congress. From 1864 until 1988, such fees were limited to $10.00. In 1988, Congress passed the ''Veterans' Judicial Review Act'' (VJRA), Pub. L. No. 100–687, Div. A, 102 Stat. 4105, which permitted agents and attorneys to charge a ''reasonable fee'' for services provided in a case when the following three conditions were met:

- The Board made its first final decision in the case;
- The Board's first final decision followed a ''notice of disagreement'' filed with VA on or after the enactment date of the VJRA, i.e., November 18, 1988; and
- The agent or attorney was retained with respect to such case within one year of the date of the Board s first final decision.

38 U.S.C. 5904(c)(1); Pub. L. No. 100–687, Div. A, § 403, 102 Stat. 4105, 4122, *reprinted in* 38 U.S.C.A. 5904 note (Applicability to Attorneys Fees) (notice of disagreement date).

In § 603(b) of the ''Veterans Education and Benefits Expansion Act of 2001'', Pub. L. No. 107–103, 115 Stat. 976, 999 (Dec. 27, 2001), Congress repealed the requirement that, in order for an agent or attorney to charge a fee for services provided in a case, the Board's first final decision must have followed a notice of disagreement filed on or after November 18, 1988. This document implements that change in VA's regulations.

This change does not affect the requirements that, in order for an agent or attorney to charge a fee for services provided in a case, (1) the Board must have made its first final decision in that case, and (2) the agent or attorney must have been retained with respect to such case within one year of the date of the Board's first final decision.

Administrative Procedure Act

Because this rule merely implements a change in the statute, notice and public comment are unnecessary. 5 U.S.C. 553(b)(B). Accordingly, we are publishing this amendment as a final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment will not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: July 3, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. In § 20.609, paragraph (c) is revised to read as follows:

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(c) *Circumstances under which fees may be charged.* (1) *General.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if both of the following conditions have been met:

(i) A final decision has been promulgated by the Board of Veterans' Appeals with respect to the issue, or issues, involved; and

(ii) The attorney-at-law or agent was retained not later than one year following the date that the decision by the Board of Veterans' Appeals with respect to the issue, or issues, involved was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(2) *Clear and unmistakable error cases.* For the purposes of this section, in the case of a motion under subpart O of this part (relating to requests for revision of prior Board decisions on the grounds of clear and unmistakable error), the ''issue'' referred to in this paragraph (c) shall have the same meaning as ''issue'' in Rule 1401(a) (§ 20.1401(a) of this part).

* * * * *

[FR Doc. 02–19330 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[KY–116; KY–119–200214(d); FRL–7252–8]

Approval and Promulgation of Implementation Plans Reinstatement of Redesignation of Area for Air Quality Planning Purposes; Kentucky Portion of the Cincinnati-Hamilton Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the reinstatement of the redesignation to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS) for the Kentucky portion of the Cincinnati-Hamilton area. This final rule addresses these comments made on EPA direct final rulemaking previously published for this action.

DATES: This final rule is effective August 30, 2002.

ADDRESSES: Copies of the Commonwealth of Kentucky's original redesignation request, the Court's ruling and other information are available for inspection during normal business hours at EPA Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–8960; Persons wishing to examine these documents should make an appointment at least 24 hours before the visiting day and reference file KY–116.

Copies of the Commonwealth of Kentucky's original redesignation request are also available at Commonwealth of Kentucky, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601–1403.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at the EPA Region 4 address listed above or 404–562–9031 (phone) or *notarianni.michele@epa.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Today's Action

In this final rulemaking, EPA is responding to comments received regarding a direct final and proposed rule to reinstate the redesignation to attainment for the 1-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area.

II. Background

On June 19, 2000, EPA issued a final rule determining that the Cincinnati-Hamilton area had attained the one-hour ozone NAAQS, and redesignating both the Ohio and Kentucky portions of the area to attainment. 65 FR 37879. A petition for review resulted in the U.S. Court of Appeals for the Sixth Circuit vacating EPA's action in redesignating the area to attainment, and remanding to EPA for further proceedings consistent with the Court's opinion.

On February 12, 2002, the EPA published a proposed rule (67 FR 6459) and a direct final rule (67 FR 6411) to reinstate the attainment redesignation of the Kentucky portion of the Cincinnati-Hamilton moderate 1-hour ozone nonattainment area (Cincinnati-Hamilton area), which comprises the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. Further background is set forth in the direct final rulemaking. 67 FR 6411. The EPA withdrew the direct final rule on April 8, 2002 (67 FR 16646), because adverse comments were received. This final rule addresses the comments.

III. Comment and Response

What Comments Did We (EPA?) Receive and What Are Our Responses?

EPA received two sets of adverse comments, one submitted by David Baron on behalf of the Sierra Club, Brian Scott, Pasko, and Ron Colwell, and the other submitted by Hank Gaddy on behalf of the Cumberland, KY Chapter of the Sierra Club. A summary of the adverse comments and EPA's responses to them are provided below.

Comment 1: A commentor contends that section 107(d)(3)(E) of the Clean Air Act (the ''Act'') unambiguously prohibits redesignation of any portion of a nonattainment area to attainment unless all of the requirements set forth in section 107(d)(3)(E) are met for the entire nonattainment area. Since the Court in *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) determined that there was a deficiency in the Ohio Reasonably Available Control Technology (RACT) rules that must be remedied before EPA could find that Ohio met the requirements for redesignation, then this also prevents EPA from reinstating the redesignation of the Kentucky portion which the Court had upheld in all respects.

Response 1: The *Wall* Court did not vacate EPA's approval of the maintenance plan for either portion of the area. Therefore the maintenance plan for the entire area is approved. The

Court also did not vacate EPA's determination of attainment for the entire area. Therefore the determination remains in effect. In addition, the area has continued to remain in attainment through July 31, 2002. Moreover, the *Wall* Court upheld EPA's action with respect to all aspects of the redesignation of the Kentucky portion of the Cincinnati area. For the reasons set forth more fully below, EPA believes that the Kentucky portion may be redesignated separately from the Ohio portion, and the deficiency in the Ohio RACT rule in no way prevents EPA from reinstating its redesignation of Kentucky, which the Court has validated in all respects. The Court's ruling on the Ohio RACT rules affects only the requirements relating to the Ohio State Implementation Plan (SIP), which are not relevant to whether Kentucky fulfilled all its requirements under the Clean Air Act regarding the area. 67 FR 6411–6413 (February 12, 2002) (*See also* responses to Comments 2, 3, and 4.)

Comment 2: In section 182(j) of the Act, Congress provided for relief from certain Clean Air Act sanctions for a state in a multi-state ozone nonattainment area, where continued nonattainment is due to the failure of one or more other states in which other portions of the area are located to commit to implementation of required measures. Significantly, Congress did not provide for any sort of similar relief from the Act's redesignation requirements for a state within a multi-state ozone nonattainment area.

Response 2: The language of section 107(d)(3)(E) itself provides that a portion of a nonattainment area can be redesignated if the requirements for redesignation are met: ''The Administrator may not promulgate a redesignation of a nonattainment area (*or portion thereof*) to attainment unless * * *'' Similarly, section 107(d)(3)(D) provides: ''The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State * * *''

Other subparts of section 107(d)(3) also refer to redesignation of an area or portion thereof. See sections 107(d)(3)(A), (B), and (C).

Thus, the Act clearly contemplates the possibility of redesignating a portion of a nonattainment area. The remaining subparts must be read in the context of whether an area or a *portion* of an area is being redesignated. If it is a portion of a multi-state area that is being redesignated, then the word ''area'' as subsequently used in the subpart must refer to that portion of the multi-state area that is being redesignated. This interpretation is borne out by the express terms of the subparts of 107(d)(3)(E). (*See* response to Comment 3 below.) In general, EPA issues simultaneous redesignations for joint portions of multistate ozone areas. In a few instances, however, where separate portions of a multistate area have been unable to successfully coordinate their redesignation efforts and one state has met all the requirements for redesignation, EPA has applied section 107(d)(3)(E) to implement Congressional intent to allow redesignation of a portion of the multi-state area where that portion meets the statutory requirements and where the entire area is attaining the standard.

In section 182(j), Congress similarly expressed its intent to allow EPA to treat portions of multi-state areas separately so as not to penalize one portion of a multi-state nonattainment area simply because the state controlling the other portion had not fully discharged its regulatory responsibilities. In that section, even where the entire area remains nonattainment, Congress provided for separate recognition and treatment for the state that had fulfilled its statutory obligations. Similarly, in section 107(d), Congress expressly provided that a portion of a multi-state nonattainment area that met the requirements for redesignation should not be penalized by a failure of a state controlling an adjoining portion. In section 107, Congress distinguished between the air quality in the region and the control regime, and clearly intended that, where air quality met the standard in the area, the state with authority over a portion of the area that has met all the remaining requirements should not be penalized by having to remain labeled nonattainment. Thus under appropriate circumstances, EPA has implemented this intent by allowing redesignation of a portion of a multi-state area.

Comment 3: EPA's approach would undermine Congressional intent to ensure that nonattainment areas would completely comply with the Act's requirements prior to redesignation, and to not allow an area to evade adoption of required controls, be redesignated, and fall back into nonattainment.

Response 3: EPA's approach does not undermine Congressional intent. In fact, redesignating the Kentucky portion of Cincinnati implements the intent of Congress as expressed in the redesignation provisions of the statute. First, the entire area is attaining the one-hour ozone standard, and EPA's attainment determination remains in effect, and has never been challenged. Second, the maintenance plans for the entire area were approved by EPA, reviewed by the Sixth Circuit, and upheld. The Ohio and Kentucky maintenance plans remain in place, and were never vacated. Third, Kentucky has met *all* of the requirements for redesignation. In its June 2000 rulemaking, EPA reviewed and approved the redesignation based on its findings that Kentucky met these requirements, and the Sixth Circuit has reviewed and upheld EPA's actions in their entirety with respect to the Kentucky portion of the area. Fourth, all aspects of the Ohio portion of the Cincinnati area were reviewed and upheld by the Sixth Circuit, with the sole exception of some RACT rules which the Court agreed were not necessary for attainment or maintenance. Commitments to adopt these rules are already included as contingency measures in the approved maintenance plan for Ohio. Finally, Ohio is in the process of revising its RACT rules so that it can resubmit its redesignation request in accordance with the Court's decision in the *Wall* case, so that it is likely that processing of the redesignation of the Ohio portion of the area will take place in close proximity to the reinstatement of the redesignation, for the Kentucky portion. EPA believes that this type of coordination will further insure that the redesignation efforts will be kept in balance in both portions of the area.

There is thus no legal impediment to redesignation and no environmental benefit in favor of holding the Kentucky portion of the area hostage. To force Kentucky to reconstruct and resubmit work already reviewed and upheld, and to compel EPA to reevaluate rulemakings that this Court has already reviewed and approved, would result in a waste of state, EPA, and judicial resources, and to defeat the intent of Congress. This Court has upheld the principle that where EPA has already approved state rulemakings as meeting Clean Air Act requirements, it need not re-do this work for purposes of finding that requirements are met for a redesignation action. See Calcagni memo[1], which advises that ''an EPA action on a redesignation request does not mean that earlier issues with regard to the SIP will be reopened'', and *SPGA* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426, 438 (6th Cir. 2001)

[1] Memorandum from John Calcagni, Director of the EPA Air Quality Management Division, dated September 4, 1992, entitled ''Procedures for Processing Requests to Redesignate Area to Attainment.''

In the case of Cincinnati, the entire area is attaining the one-hour ozone standard, the Kentucky portion has completely complied with the remainder of the Act's requirements prior to being redesignated, and the entire area, including both the Ohio and Kentucky portions, has approved maintenance plans in effect. There is fulfillment, and not evasion of Congressional intent. The introductory sentence in section 107(d)(3)(E) clearly and expressly provides the Administrator with the option of redesignating a *portion* of a nonattainment area. If a portion of a nonattainment area is the subject of the redesignation, the reference to ''area'' in the subsequent subparts of section 107(d)(3)(E), must be read to apply to the portion being redesignated. In fact, when one state's portion of a multi-state area is being redesignated, that is the only meaningful way to read subparts (ii) through (v) of section 107(d)(3)(E), since they refer to the control requirements and plans for the state that contains the portion of the area.

Where a portion of an area is requesting redesignation, subpart (i) requires the Administrator to determine its attainment status. Because ozone is an area pollutant, EPA has concluded that the determination of whether a portion of a multistate ozone area has attained includes consideration of the attainment status of the area as a whole. By contrast, subparts (ii) through (v) refer to implementation plan requirements for the area being redesignated, and each plan applies only to that portion over which the state requesting redesignation has authority. Subpart (ii) states that ''the Administrator has fully approved the applicable implementation plan for the area under section 110(k)''. Where only one state's portion of the area is the subject of the redesignation action, this subsection, written in the singular, applies to that state's plan for the area—that is, to its portion of the larger nonattainment area. Similarly, subpart (iii) requires the Administrator to determine that there are permanent and enforceable reductions in emissions ''resulting from implementation of the applicable implementation plan * * *'', which means, in the case of a portion of a multi-state area, the implementation plan applicable to that portion of the area being redesignated.

Subpart (iv) states that the Administrator must fully approve ''a maintenance plan for the area as meeting the requirements of section 175A''. Here again, the only maintenance plan for the area being redesignated is for that portion over which the state requesting redesignation has authority. No other maintenance plan is subject to approval. Section 175A itself reinforces this reading. It provides:

> Each state which submits a request under section 107(d) for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.

It is clear that the maintenance plan for ''the area concerned'' and for which the Commonwealth of Kentucky has submitted a request is for a portion of the Cincinnati nonattainment area, and that is the only part of the area for which it has power to make a request and to promulgate planning and control requirements. Moreover, section 175A clearly treats each state's maintenance plan responsibilities as discrete obligations of that state over the area within its jurisdiction. (*See also* responses to Comments 2 and 4 above.) Section 107(d)(3)(v) provides, as a prerequisite to redesignation, that: ''The State containing such area has met all requirements applicable to the area under section 110 and part D.'' This section plainly shows that Congress meant for EPA to evaluate whether the State requesting redesignation of an area has met the applicable requirements for that area, and that this requirement applies in the context of the State containing the area whose redesignation is under consideration. In a multistate area, where only one state's portion of the area is being considered for redesignation, Congress did not intend to require that state to demonstrate, or EPA to evaluate, a separate and distinct set of a different state's requirements applicable to the portion not contained in the state submitting a redesignation request.

Comment 4: EPA's approach also undermines the Act's maintenance plan and contingency measure requirements. Section 107(d)(3)(E)(iv) requires that prior to redesignation, EPA must have fully approved a maintenance plan ''for the area'' under section 175A. The maintenance plan must contain contingency provisions that require implementation of any measures in the pre-redesignation SIP. The lack of adequate RACT measures in the SIP means that the entire area lacks an adequate continency plan as well. The RACT deficiency threatens the health of people throughout the nonattainment area –not just in Ohio.

Response 4: Pursuant to section 107(d)(3) and section 175A, the maintenance plan requirements are separate for each state's portion of the area to be redesignated. Section 107 provides that the Administrator must fully approve ''a maintenance plan for the area as meeting the requirements of section 175A''. The use of the singular ''a maintenance plan for the area'' indicates that this provision is applicable separately to each portion of a multi-state area. Moreover, section 175A, whose requirements are incorporated by 107(d)(3)(iv), reinforces this reading by providing that:

> Each State which submits a request under section 107(d) for redesignation of a nonattainment area * * * shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any as may be necessary to ensure such maintenance.

Section 175A(d) provides that the maintenance plan must also include such enforcement provisions ''as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area.''

Thus each state separately submits a redesignation request for the area under its jurisdiction, and each state has authority only to adopt and submit for approval a maintenance plan and a revision of its state implementation plan that are applicable to its territory. Since each state's obligation under section 107(d) and 175A applies solely to each state's implementation plan and each state's separate portion of a multi-state nonattainment area, EPA's reading of section 107 is consistent with the text, plain meaning, and logic of the redesignation and maintenance provisions. In any event, even assuming, contrary to the language of the statute, that approval of one state's maintenance plan revisions were dependent on the approvability of another state's maintenance plan, in the case of Cincinnati both the Ohio and Kentucky maintenance plans have been approved by EPA, and those approvals have been upheld by the Sixth Circuit. The Sixth Circuit in *Wall* expressly stated: ''We therefore uphold the EPA's approval of the two states' clean air maintenance plans for the Cincinnati metropolitan area.'' *Wall* v. *EPA,* 265 F.3d 426, 437, 438.

Any corrections to the Ohio RACT rules do not undermine the Kentucky maintenance plan, nor do they undermine the approvability of Ohio's plan. The RACT rules at issue were concededly never implemented and not necessary for attainment or maintenance, although a commitment to adopt them was contained in the contingency measures in the Ohio maintenance plan. Plainly no threat to the health of the people of Ohio or the rest of the region is posed by redesignation of the Kentucky portion of the Cincinnati area.

Comment 5: Even if EPA could redesignate just a portion of the nonattainment area, it cannot do so here, because the states have not shown maintenance of the standard for at least 10 years, as is required by section 107(d)(3)(E)(iv) and 175A of the Act. Although EPA's prior approval of a maintenance plan was upheld by the *Wall* court, that plan addressed only the 10-year period subsequent to the date of the prior redesignation. Because EPA is proposing a new redesignation, the states must demonstrate maintenance for at least 10 years from the date of approval of the new redesignation—something that they have not done here.

Response 5: EPA is not proposing a new redesignation, but rather reinstating the redesignation of the Kentucky portion of the Cincinnati nonattainment area, based on the Sixth Circuit having upheld all of EPA's actions with respect to that redesignation. Moreover, the Court upheld the maintenance plan that accompanied that redesignation. Given that no deficiencies were found after extensive review by the Sixth Circuit, EPA believes that the proper response on remand is reinstatement of the redesignation, rather than having the state and EPA re-do work as to which no defects were found. Commentors seek to have EPA and Kentucky go back to re-do actions that were upheld in their entirety by the Court. No legal or public policy purpose is served by such waste of resources.

Comment 6: New information that was not available at the time of public comment on EPA's previous redesignation shows that the maintenance plan does not in fact assure maintenance of the standard for at least 10 years. Modeling conducted by EPA in connection with the heavy-duty diesel vehicle and diesel fuel rule shows that the Cincinnati area will again violate the ozone standard by 2007, and that these violations will continue through 2030 even with emission reductions from the diesel rule. This modeling takes into account monitoring data through 1999. In its prior redesignation, EPA discounted the modeling results of the Agency's Tier 2 rulemaking on the ground that it did not consider 1999 monitoring data. Yet EPA's diesel rule does consider this data and predicts ozone violations that EPA should not ignore or discount. Although the diesel rule Regulatory Impact Analysis (RIA) asserts that ''the risk of future exceedances occurring in the Cincinnati-Hamilton area is most prevalent after the end date of Cincinnati's proposed 10-year maintenance plan (i.e. after 2010)'', the commentor sees nothing that supports this assertion, and asks EPA to explain it. The commentor further requests EPA to explain how prevalent the RIA shows the risk of exceedances to be in or before and after 2010, and before and after 2012, which the commentor contends is the end of the new maintenance period, and how EPA judges such risk. The commentor also argues that regardless of whether the risk is more prevalent in later years, the RIA still predicts violations prior to 2010.

Response 6: The information provided in the heavy-duty diesel rule discussed by the commentor does not show that the Cincinnati area will again violate the ozone standard by 2007. First, as with the Tier 2 rule, the focus of the heavy duty rule was not to evaluate the attainment or nonattainment of the Cincinnati metropolitan area, but rather to reduce emissions from heavy duty trucks nationally.

As the Court found in *Wall,* the heavy duty diesel rule, like the findings in the Tier 2 rulemaking proceeding, are not applicable here. The *Wall* Court observed that:

> The focus of the Tier 2 proceeding was not specifically to evaluate the attainment or nonattainment to the Cincinnati metropolitan area, but rather to develop a 'major program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles', vehicles whose emissions contribute heavily to the generation of ground-level ozone. 65 FR 6698 265 F.3d at 437.

Similarly, the focus of the heavy duty diesel rule was a national program to reduce emissions from heavy duty diesel trucks throughout the United States. EPA based its decision to regulate such sources on the national need for emission reductions, not on the need of any particular area. One of the pieces of information EPA used in its review of the need for these reductions was regional photochemical ozone modeling performed by EPA for the diesel rule. However, EPA also took into consideration other modeling studies developed for SIPs. EPA noted that:

> * * * [t]he ozone modeling in the SIP revisions has the advantage of using emission inventories that are more specific to the area being modeled, and of using meteorological conditions selected specifically for each area. Also, the SIP revisions included other evidence and analysis, such as analysis of air quality and emissions trends, observation-based models that make use of data on ozone precursors, alternative rollback analyses, and information on the responsiveness of the air quality model. For some areas we decided that the predictions of 1-hour ozone exceedences from our modeling were less reliable than conclusions that could be drawn from this additional evidence and analysis...Thus, these local analyses are considered to be more extensive than our own modeling for estimating whether there would be NAAQS nonattainment without further emission reductions, where interpreted by a weight of evidence method which meets our guidance for such modeling. 66 FR 5013.[2]

We reviewed 45 areas with some history of ozone nonattainment to determine whether there was a broad need for further emission reductions. Based on all of the evidence presented, we determined that there is a significant risk that an appreciable number of the 45 areas will violate the 1-hour ozone standard between 2007 and 2030. Id at 5015. We made no determination that any area would violate the ozone standard during that time.

We divided the areas into three sets of areas, based on time of attainment demonstration under the Act and recent history regarding exceedences. Cincinnati was in the third group, where available ozone modeling and other information was ''less clear regarding the need for additional reductions.'' In particular, these areas did not have recent exceedences, but did have recent data indicating levels within 10 percent of the ozone NAAQS. Id. at 5015–16.

With regard to Cincinnati specifically, EPA stated in our RIA for the diesel rule:

> The Agency recently redesignated Cincinnati-Hamilton, OH–KY–IN to attainment on June 19, 2000. This determination is based on four years of clean air quality monitoring data from 1996 to 1999 (1999 data was not considered in the Tier 2 air quality analysis or the proposal for this

[2] As we noted in our previous approval for this nonattainment area, with respect to ozone modeling performed for the tier 2 rule ''we used a regional ozone modeling system to predict ozone in many cities, as part of an interpretative process to characterize the risk of nonattainment in a large and geographically broad number of areas. While ozone predictions and the characterization of the risk of nonattainment in individual areas was a step toward reaching a conclusion about risks across the group of areas, that characterization was not an Agency finding of violations for any specific ares.'' 65 FR 37882.

rulemaking), and a downward emissions trend. In today's action, Cincinnati-Hamilton is considered to have some risk of registering exceedances of the 1-hour ozone standard during the time period when the HD vehicle standards would take effect. This determination is based on air quality monitoring analysis and 1999 data with concentrations within 10 percent of the standard. Given these circumstances, the risk of future exceedances occurring in the Cincinnati-Hamilton area is most prevalent in the time period beyond the end date of Cincinnati's proposed 10-year maintenance plan (i.e., after 2010). As discussed in more detail in the relevant portions of the response to comment document for the Cincinnati-Hamilton attainment determination, any emissions and ozone modeling system used to predict future ozone involves approximations and uncertainties, and are best treated as indicators of risk rather than absolute forecasts. Thus a determination made in this rule that there is some risk of future exceedances during the relevant time period is not inconsistent with EPA approval of Cincinnati's redesignation to attainment, and its approval of Cincinnati's 10-year maintenance plan (citing to Technical Memorandum to EPA Air Docket A–99–06, April 20, 2000, Cincinnati Redesignation in Attainment and Approval of 10-Year Maintenance Plan). Diesel Rule RIA at II–15.

As this information from the diesel rule shows, EPA believes that the modeling performed for the diesel rule was only one factor, and not necessarily the most important factor, in determining whether, and to what extent, Cincinnati was at risk of nonattainment. It is therefore not inconsistent with EPA's action in today's final rule.

Regarding the commentor's question on the prevalence of risk for future exceedences, as EPA's model used in the diesel rule broadly predicts a decrease in vehicle-based emissions until 2007, a relative leveling off between 2007 and 2020, and an increase after 2020, it presumes that without further reductions, emissions and resulting ozone concentrations would increase in later years compared to the years 2010 or 2012. Diesel Rule RIA at II–12 to 13.

Comment 7: A commentor contends that EPA has not proposed to find compliance with the other prerequisites for redesignation in section 107(d)(3)(E). It is not enough that EPA found compliance with these requirements in its July 2000 redesignation rulemaking. EPA itself has taken the position that redesignation is precluded if the area violates the NAAQS anytime prior to final action on a proposed redesignation. *Kentucky* v. *EPA,* No. 96–4274 (6th Cir. Sept. 2, 1998). Under the statute, EPA must make a determination that all of the statutory prerequisites are met at the time of final action on a proposed redesignation.

Response 7: EPA is not re-creating or reproposing a redesignation *ab initio.* EPA is simply reinstating on remand from the Court a rulemaking that the Court has upheld in all respects. In this rulemaking, EPA found, and the Court agreed, that the Commonwealth of Kentucky had met all the requirements for redesignation at the time of redesignation. In a separate and discrete rulemaking action accompanying the redesignation action, EPA found that the area had attained the standard, and issued a formal determination that the area had attained the one-hour ozone standard. This determination of attainment, which continues in effect to this date, has never been withdrawn or even challenged. EPA also approved, and this Court upheld, maintenance plans for both portions of the area, which plans continue in effect to this date. Under these circumstances, reinstatement of the rulemaking is the proper procedure on remand. All other requirements that EPA had previously found to satisfy the redesignation criteria also remain in effect. EPA is not required to make new findings to support EPA actions that have already been taken with respect to Kentucky and which the Court has upheld after judicial review.

Comment 8: Even if EPA could redesignate a portion of the nonattainment area, it has no authority to make that redesignation retroactive. Section 175A(c) expressly provides that the nonattainment area requirements continue to apply ''[u]ntil'' the area is redesignated to attainment and a maintenance plan is approved. Here, where the *Wall* court vacated the prior redesignation, that redesignation is a nullity. Any subsequent redesignation can be prospective only.

Response 8: EPA is not engaging in retroactive rulemaking. It is merely reinstating a rulemaking that the Sixth Circuit did not invalidate. While the Sixth Circuit did vacate the redesignation, it did so only because of a defect—the lack of implemented RACT rules—that applies solely to that portion of the Cincinnati ozone nonattainment area that lies within the State of Ohio. The court found no such defects in the portions of the area situated within Kentucky. Moreover, the Clean Air Act specifically provides that EPA may redesignate a portion of an area, such as the portion of the Cincinnati area that lies within Kentucky, when that portion qualifies for redesignation. 42 U.S.C. 7407(d)(3). Because the statute's authority extends to partial redesignations, because EPA previously found that the area (including the portion within Kentucky) qualifies for redesignation, and because the court did not find any defects in Kentucky's showing that it was entitled to redesignation, EPA does not believe that it is engaged in retroactive rulemaking in reinstating the redesignation of the Cincinnati ozone nonattainment area only insofar as it applies to the Kentucky portion.

Comment 9: Sierra Club asks for a public hearing on the proposal. They question whether EPA can lawfully finalize its proposal without a hearing, when no public hearing was held at the state level. Section 7410(a)(1),(2).

Response 9: Since EPA is merely reinstating its action after all state proceedings, Federal notice and comment requirements, and judicial review have taken place, it does not see any legal or policy reason to hold another hearing on requirements that have already been determined at all three levels to have been met.

Comment 10: EPA itself has taken the position that it cannot redesignate a portion of the Cincinnati area to attainment unless the requirements of section 107(d)(3)(E) have been met throughout the entire nonattainment area. In 1996 the Agency expressly rejected an argument that the Kentucky portion of the nonattainment area should be redesignated to attainment where the only violations of the standard being recorded were at monitors in the Ohio portion. EPA stated unequivocally that ''a request to redesignate a portion of an area to attainment may not be approved if the entire area does not meet the redesignation requirements.'' 61 FR 50718, 50719

Response 10: When EPA in its prior rulemaking disapproved the redesignation request for the Cincinnati area, it was because the area was not attaining the standard. EPA has consistently required an ozone nonattainment area with a single airshed to attain the standard as a whole in order to be redesignated. The quoted statement was made in the context of that requirement. But EPA has also consistently allowed a portion of a multi-state area, where the entire area is attaining the standard, to be redesignated, provided the state with authority over that portion has met all the control regime requirements for that portion. Prior rulemakings applying this interpretation include:

CT portion of the CT-northern NJ-NY CMSA to attainment for carbon monoxide. 65 FR 12005–12015 (March 10, 1999) (Direct final rulemaking)

Huntington, WVA portion of Huntington-Ashland KY ozone nonattainment area. 59 FR 65719 (December 21, 1994)

Particulate matter redesignation of Ohio portion of the Steubenville area. 65 FR 77308 (December 11, 2000).

Comment 11: A commentor challenges the public policy and scientific basis for treating the Kentucky portion of the Cincinnati-Northern Kentucky area as a single airshed. EPA's attempt to bifurcate the Ohio and Kentucky portions of the area lacks any rational basis and does not comport with research on transport in the Ohio River Valley. EPA's action is an unwise departure from treating the area as a single airshed.

Response 11: EPA is not treating the Kentucky portion of Cincinnati as a separate airshed. To the contrary, EPA has determined that the entire Cincinnati area is attaining the one-hour ozone standard, and this is a *sine qua non* for redesignation. Moreover, the maintenance plans for both portions of the area have been approved and EPA's approvals upheld by the Sixth Circuit. EPA's action is also in keeping with its long-standing policy, once a multi-state area has attained the standard, to evaluate separately the control regime requirements for each state's portion of the area. See rulemakings listed above and response to Comment 10. EPA believes that both the law and public policy support its position that once one portion of the area has met all the requirements for redesignation, EPA should not hold that portion's redesignation hostage until a separate state fulfills the control regime requirements for its portion.

Comment 12: The area is not in compliance with the proposed eight-hour ozone standard. In May, 2001, the three Northern Kentucky counties at issue received a grade of F for their air quality, based on the number of days from 1997 to 1999 with ozone readings greater than .085 ppm. These data do not support the conclusion that the air quality in Northern Kentucky is improving.

Response 12: The area is being redesignated to attainment for the one-hour ozone standard, and therefore its status with regard to the 8-hour ozone standard is not relevant to this proceeding. EPA has determined that the area has met the one-hour ozone standard and that finding has not been challenged. The Cincinnati area has been in continuous attainment for the one-hour standard since 1998. Maintenance plans designed to maintain the one-hour ozone standard for both the Kentucky and Ohio portions have been approved by EPA, and those approvals have been upheld by the Sixth Circuit.

Comment 13: To justify redesignation, changes must be due to permanent and enforceable reductions in emissions. Kentucky's treatment of minor and synthetic minor sources for purposes of prevention of significant deterioration (PSD) and new source review means that there is no limit on these types of changes while the area is designated attainment.

Response 13: EPA is not proposing a new redesignation, but rather reinstating the redesignation of the Kentucky portion of the Cincinnati nonattainment area, based on the Sixth Circuit having upheld all of EPA's actions with respect to that redesignation. EPA's initial redesignation to attainment contained a determination that attainment was due to permanent and enforceable reductions in emissions. Kentucky's treatment of minor and synthetic minor sources for purposes of PSD and new source review is consistent with the PSD requirements for ozone areas. The Court upheld EPA's approval of the area's maintenance demonstration which was premised on PSD being in place.

Comment 14: Inadequate staffing at Kentucky's Department of Air Quality means that changes are not permanently enforceable.

Response 14: EPA doe not agree with the commentor that the Kentucky's Department of Air Quality has inadequate staffing. EPA has already determined that the changes in emissions and subsequent ambient air quality improvements are due to permanent and enforceable measures. The Sixth Circuit did uphold EPA's previous determination. The Court also upheld EPA's approval of Kentucky's and Ohio's resource and enforcement commitments. *Wall* v. *EPA*. 265 F.3d 438.

IV. Final Action

The EPA is reinstating the attainment redesignation of the one-hour ozone NAAQS for the Kentucky portion of the Cincinnati-Hamilton area.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 30, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 19, 2002.

A. Stanley Meiburg,

Acting Regional, Administrator, Region 4.

[FR Doc. 02–19324 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0155; FRL–7191–4]

Acephate, Amitraz, Carbaryl, Chlorpyrifos, Cryolite, et al.; Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes certain tolerances for residues of the pesticides acephate, amitraz, carbaryl, chlorpyrifos, cryolite, disulfoton, ethalfluralin, ethion, ethoprop, fenthion, fluvalinate, methamidophos, metribuzin, oxamyl, phorate, phosalone, phosmet, pirimiphos-methyl, profenofos, propiconazole, tetrachlorvinphos, thiram, and tribufos because these specific tolerances are either no longer needed or are associated with food uses that are no longer registered in the United States. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the revocation of 140 tolerances. Because ten tolerances were previously reassessed, 130 tolerances would be counted as reassessed. Also, EPA is announcing that six goat and sheep tolerances at 0 ppm for amitraz are considered to be reassessed. Therefore, a total of 136 tolerance reassessments would be counted among tolerance/ exemption reassessments made toward the August, 2002 review deadline.

DATES: This regulation is effective October 29, 2002; however, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings, identified by docket ID number OPP–2002–0155, must be received by EPA on or before September 30, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0155 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308-8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0155. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well

as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This final rule revokes certain FFDCA tolerances for residues of the pesticides acephate, amitraz, carbaryl, chlorpyrifos, cryolite, disulfoton, ethalfluralin, ethion, ethoprop, fenthion, fluvalinate, methamidophos, metribuzin, oxamyl, phorate, phosalone, phosmet, pirimiphos-methyl, profenofos, propiconazole, tetrachlorvinphos, thiram, and tribufos in or on specified commodities listed in the regulatory text because the tolerances are no longer needed or because these pesticides are not registered under FIFRA for uses on those commodities within the United States. However, comments were received regarding a need for EPA to retain certain tolerances, including a comment that there was a need for EPA to retain certain methamidophos tolerances to cover residues in or on imported foods. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed above if, (1) prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained, (2) EPA independently verifies that the tolerance is no longer needed, or (3) the tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In the **Federal Register** of April 15, 2002 (67 FR 18150) (FRL–6834–1), EPA issued a proposed rule to revoke the tolerances listed in this final rule. Also, the April 15, 2002 proposal provided a 60-day comment period in which public comment was invited for consideration and for support of tolerance retention under FFDCA standards.

In response to the document published in the **Federal Register** of April 15, 2002, EPA received comments on ethion, fenthion, methamidophos, pirimiphos-methyl, and profenofos, as follows:

1. *Ethion*—i. *Comment by Private Citizen*. A comment was received from a private citizen who inquired whether the ethion tolerances for cattle, fat; cattle, meat byproducts; cattle, meat (fat basis); citrus pulp, dehydrated; and citrus fruits, which were each proposed for revocation with an expiration date were also modified.

Agency Response. EPA is revoking the ethion tolerances for citrus, dried pulp and fruit, citrus in 40 CFR 180.173 with no further modification at this time. Additionally, EPA is taking no action on the ethion milk and cattle tolerances in 40 CFR 180.173 at this time.

EPA is revoking the tolerances for citrus, dried pulp and fruit, citrus in 40 CFR 180.173 with an expiration/revocation date of October 1, 2008. In the ethion RED, EPA recommended that the citrus tolerances should be revoked, but also be raised during the period before they expire (from 10.0 to 25.0 ppm for dehydrated pulp and from 2.0 to 5.0 ppm for citrus fruits) based on the available citrus field trial and processing data. However, while the citrus tolerances were proposed to be revoked and raised in the codification section of the April 15, 2002 rule (67 FR 18150), the preamble for ethion stated only that the tolerances were proposed to be revoked and did not mention raising these tolerances in the interim period. Therefore, in a future publication in the **Federal Register**, EPA will propose to raise the tolerances for citrus, dried pulp and fruit, citrus during the period before they expire to 25.0 and 5.0 ppm, respectively.

EPA is not taking action on the milk and cattle tolerances at this time in order to verify whether a cancellation order for one cattle ear tag product was completed. In addition, while the cattle tolerances were proposed to be revoked and lowered in the codification section of the April 15, 2002 rule (67 FR 18150), in the preamble for ethion, the rule had stated only that the tolerances were proposed to be revoked. Therefore, in a future publication in the **Federal Register**, EPA will propose to revoke and lower the cattle tolerances during the period before they expire on October 1, 2008 to 0.2 ppm and propose to revoke the milk tolerance on October 1, 2008.

ii. *Comments from Cheminova, Inc., Florida Citrus Mutual (FCM) and Florida Fruit and Vegetable Association (FFVA)*. Comments were received from Cheminova, FCM and FFVA who each requested that the revocation of the tolerance for ethion on citrus and animal products be set no earlier than October 1, 2008 to allow treated citrus fruit to travel through juice processing and channels of trade, as well as to allow animal commodities (from animals fed treated dehydrated citrus pulp) through channels of trade. Cheminova and FFVA noted that fruit in a citrus grove legally treated with ethion in December 2004 could remain on the tree and not be picked until May or June 2005. Cheminova and FCM noted that the bulk (90% to 95%) of Florida citrus products are made into processed juice products. Cheminova also noted that because so much of the citrus crop in Florida is grown for juice, citrus legally treated with ethion may remain in the channels of trade for several years. Both FCM and FFVA specifically stated that fruit processed for frozen concentrated orange juice could conceivably be stored for up to 24 months before being moved into the channels of trade and could take an additional 12 months before reaching the consumer.

Agency Response. EPA agrees that citrus and animal feed (citrus, dried pulp) with legal residues of ethion can take several years to clear channels of trade. With a last legal use date of December 31, 2004, the Agency agrees with the commenters that the expiration date of October 1, 2008 for the citrus and animal tolerances is reasonable. Therefore, EPA is revoking the tolerances in 40 CFR 180.173 for residues of ethion including its oxygen analog (S-[[diethoxyphosphinothioyl)thio]methyl] O,O-diethyl phosphorothioate) in or on goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; sheep, fat; sheep, mbyp; and sheep, meat with an expiration/revocation date of October 1, 2008.

In addition, EPA is revoking the tolerance for raisins and tea, dried in 180.173 with an effective date that is 90 days after publication of this final rule in the **Federal Register**. On January 14, 1998 (63 FR 2163)(FRL–5755–9), EPA consolidated certain food and feed additive tolerance regulations in 40 CFR parts 185 and 186 to part 180, including the raisins and tea, dried tolerances for ethion from 185.2750 into 180.173. On February 5, 1998 (63 FR 5907)(FRL–5743–9), the Agency proposed to revoke the tolerances for raisins and tea, dried in 40 CFR 180.173. The Agency did not receive any comment on the proposed revocation of these two tolerances. However, on October 26, 1998, EPA published a final rule in the **Federal Register** (63 FR 57067) (FRL–6035–6) which inadvertently did not remove the raisins and tea, dried tolerances from the table of entries found in 40 CFR 180.173. Now, EPA is finalizing that action.

2. *Fenthion—Comment by Bayer Corporation*. A comment was received from Bayer Corporation in which Bayer stated that it is not appropriate to revoke the fenthion milk and animal tolerances (fat, meat, and meat byproducts for cattle and hogs) in 40 CFR 180.214 with the proposed expiration date of April 1, 2003 because these tolerances are also necessary for use of fenthion drug products, insecticides for cattle use, one of which is a pour-on. Bayer stated that while it stopped manufacturing these animal drug products on September 28, 2000, one product can be used on livestock until it expires on September 28, 2004. Also, Bayer noted that treated commodities would take an additional 18 months to move through trade channels and requested an expiration date of April 1, 2006 as more appropriate.

Agency Response. To address Bayer's concern, the Agency is revoking the tolerances in 40 CFR 180.214 for residues of fenthion and its cholinesterase-inhibiting metabolites in or on cattle, fat; cattle, meat; and cattle (mbyp) with an expiration/revocation date of April 1, 2006 to allow sufficient time for treated commodities to pass through channels of trade. In a follow-up communication, Bayer stated that (1) no swine uses were associated with the two fenthion animal drug products and (2) the two fenthion animal drug products were for use on non-lactating dairy cattle. For these reasons, Bayer noted that there is no need to extend the milk or hog tolerances. Therefore, EPA is revoking the tolerances in 40 CFR 180.214 for hogs, fat; hogs, meat; hogs (mbyp); and milk with an expiration/revocation date of April 1, 2003, which allows sufficient time for treated commodities to pass through channels of trade.

Also, EPA is revising commodity terminology in 40 CFR 180.214 to conform to current Agency practice as follows: ''cattle (mbyp)'' to ''cattle, meat byproducts;'' ''hogs, fat'' to ''hog, fat;'' ''hogs, meat'' to ''hog, meat;'' and ''hogs, mbyp'' to ''hog, meat byproducts.''

3. *Methamidophos*—i. *Comment by Canadian Horticultural Council (CHC)*. A comment was received from the CHC, who requested the retention of methamidophos (trade name Monitor) tolerances for broccoli, Brussels sprouts, cabbage, cauliflower, and lettuce to allow importation of those methamidophos-treated food commodities.

Agency Response. Because a comment was received which expressed a need for the retention of specific tolerances for import purposes, EPA will not revoke the tolerances in 40 CFR 180.315 for broccoli, Brussels sprouts, cabbage, cauliflower, and lettuce at this time. EPA will follow-up to see that data requirements are met. When the submitted data have been reviewed, EPA will re-evaluate these tolerances under FFDCA.

ii. *Comment by Private Citizen*. A comment was received from a private citizen who asked that the Agency comment on Brussels sprouts, cauliflower, and lettuce codified in 40 CFR 180.108 under acephate with regard to the metabolite methamidophos in light of the proposed revocations in 40 CFR 180.315 for those tolerances.

Agency Response. There are active registrations for acephate, which degrades to methamidophos residues, on Brussels sprouts, cauliflower, and lettuce head. These tolerances are codified at 40 CFR 180.108 for residues of methamidophos (O,S-dimethyl phosphoramidothioate) as no more than 0.5 ppm, 0.5 ppm, and 1.0 ppm, respectively. However, while there are no active registrations for use of methamidophos on Brussels sprouts, cauliflower, and lettuce, there are tolerances for those commodities codified at 40 CFR 180.315 for residues of methamidophos at 1.0 ppm. To achieve compatibility with CODEX (0.5 ppm for cauliflower and 1.0 ppm for lettuce head) and to remove duplicate tolerances, EPA proposed to revoke the cauliflower (1.0 ppm) and lettuce (1.0 ppm) tolerances for methamidophos in § 180.315. Methamidophos residues from the use of acephate on Brussels sprouts, cauliflower, and lettuce head would have remained covered under 40 CFR 180.108. In a future publication in the **Federal Register**, EPA will propose to revise the acephate tolerances in 40 CFR 180.108 by consolidating that portion concerning residues of methamidophos from acephate use to be recodified with other methamidophos tolerances under § 180.315.

EPA is revoking the tolerances in 40 CFR 180.315(a) for residues of methamidophos in or on beets, sugar, roots; and beets, sugar, tops. On July 2, 1997, EPA published a notice in the **Federal Register** (62 FR 35812) (FRL–5724–7) under section 6(f)(1) of FIFRA announcing its receipt of requests from the registrants to terminate the use of methamidophos on all crops except cotton and potatoes, and to cancel all methamidophos 24(c) food-use registrations not labeled for use on tomatoes only, and provided a period for public comment. On December 23, 1997 (62 FR 67071) (FRL–5764–2), EPA published a notice in which the Agency responded to comments received and approved those terminations and cancellations, effective December 31, 1997. The Agency determined that after December 31, 1997 only persons other than the registrants were allowed to sell and distribute existing stocks, which EPA believed to be relatively small. More than four years has passed, which the Agency believes to be sufficient time for exhaustion of those stocks and for treated commodities to have cleared channels of trade.

Because a petition submitted by the registrant to the Agency for use on peppers regarding a FIFRA section 24(c) registration is pending and because of the possibility that existing labels for section 24(c) registrations may not yet have been amended regarding deletion of cucumbers, eggplant, and melons, the Agency will not address cucumbers, eggplant, melons, and peppers at this time. However, EPA is revising commodity terminology in 40 CFR 180.315 to conform to current Agency practice as follows: ''cottonseed'' to ''cotton, undelinted seed;'' ''cucumbers'' to ''cucumber;'' ''melons'' to ''melon;'' ''peppers'' to ''pepper;'' ''potatoes'' to ''potato'' and ''tomatoes'' to ''tomato.'' EPA is also removing the ''(N)'' designation from the ''cotton, undelinted seed'' and ''potato'' entries to conform to current Agency administrative practice (''N'' designation means negligible residues).

4. *Pirimiphos-methyl—Comment by Schering-Plough Animal Health Corporation*. A comment was received from Schering-Plough, who requested that the current pirimiphos-methyl tolerances for cattle be retained. Schering-Plough stated that the insecticide is currently used in ear tag products as part of an integrated pest management program to control horn flies and face flies on beef and non-lactating dairy cattle and calves. Also,

Schering-Plough noted that a 1996 magnitude of residue study from dermal application for a pour-on product was submitted to EPA, but was returned pending completion of the organophosphate cumulative risk assessment process. In addition, Schering-Plough asked that the Agency provide a consistent and level playing field to all sponsors; i.e., EPA should not include one sponsor's proposed use for pre-treatment of grain storage bins (Product and Chemistry Chapter of June 1, 1998), while at the same time exclude or delay approval of another proposed use such as for a cattle-pour-on product in their assessment. Finally, Schering-Plough noted that EPA actions to revoke or lower cattle tolerances would be an inefficient use of resources because Schering-Plough expects to submit an application for registration of a pirimiphos-methyl pour-on product for cattle, including a completed dermal magnitude of residue study.

Agency Response. In the proposal of April 15, 2002, EPA concluded that the current tolerance on ''cattle meat'' was no longer needed because the Agency has a reasonable expectation that no detectable pirimiphos-methyl residues of concern would be found in cattle meat as a result of cattle exposure via existing uses of pirimiphos-methyl. (Results from ruminant and poultry feeding studies, and residue trials conducted on stored grains, indicated that residues in certain livestock commodities could be classified under 40 CFR 180.6(a)(3); i.e., there is no reasonable expectation of finite residues). Schering-Plough noted that the proposal to revoke the cattle meat tolerance was based on the Agency's review of livestock feeding studies, not from a magnitude of residue study from dermal application. Schering-Plough requested retention of the cattle meat tolerance and stated it would submit a registration application for a new use (pour-on product formulation) for cattle, including a dermal metabolism study for pirimiphos-methyl. EPA maintains that a cumulative risk assessment for all organophosphate active ingredients must be completed before the acceptance of new registrations can occur for pirimiphos-methyl. Whether dermal exposure results for pirimiphos-methyl would have the same metabolic pattern as oral dosing is not known. At this time, EPA will not take action on the tolerance for ''cattle, meat'' in 40 CFR 180.409. EPA will continue to deliberate the issue, but may finalize the revocation of the cattle meat tolerance in a future publication in the **Federal Register**.

Because the tolerances are no longer needed, EPA is revoking the tolerances in 40 CFR 180.409(a)(1) for combined residues of pirimiphos-methyl, O-[2-diethylamino-6-methyl-4- pyrimidinyl) O,O-dimethyl phosphorothioate, the metabolite O-[2-ethylamino-6-methyl-pyrimidin-4-yl) O,O-dimethyl phosphorothioate and, in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol), 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol in or on eggs; goats, meat; hogs, meat; horses, meat; milk, fat (0.1 ppm (N) in whole milk; poultry, mbyp; poultry, meat; and sheep, meat.

According to the pirimiphos-methyl Interim Reregistration Eligibility Decision (IRED), residues in sorghum milling fractions are no longer included in Table 1, ''Raw Agricultural and Processed Commodities and Livestock Feeds Derived From Field Crops,'' of OPPTS 860.1000 (EPA 712–C–96–169, Residue Chemistry Test Guidelines, August 1996); i.e., sorghum milling fractions are no longer considered a significant feed item, and the tolerance is no longer needed. Therefore, EPA is revoking the tolerance in § 180.409(a)(2) for sorghum milling fractions (except flour). For reassessment counting purposes, the tolerance for sorghum milling fractions will count as two to reflect the two tolerances (in 40 CFR 185.4950 and 186.4950) that had existed on August 3, 1996, when FQPA was enacted.

EPA is removing the tolerances in § 180.409(a)(2) for corn milling fractions (except flour); and corn oil. In the IRED, the Agency concluded that based on processing studies pirimiphos-methyl residues did not concentrate in these processed commodities and therefore these tolerances are no longer needed. Because the use of pirimiphos-methyl on corn remains, any residues in or on these processed corn commodities will remain covered by the existing tolerance for corn. For reassessment counting purposes, the Agency will not count removal of the tolerances for corn oil and corn milling fractions (except flour) as reassessments in this final rule.

In addition, EPA is revising commodity terminology in 40 CFR 180.409 to conform to current Agency practice as follows: ''cattle, mbyp'' to ''cattle, meat byproducts;'' ''goats, fat'' to ''goat, fat;'' ''goats, mbyp'' to ''goat, meat byproducts;'' ''hogs, fat'' to ''hog, fat;'' ''hogs, mbyp'' to ''hog, meat byproducts;'' ''horses, fat'' to ''horse, fat;'' ''horses, mbyp'' to ''horse, meat byproducts;'' ''sheep, mbyp'' to ''sheep, meat byproducts;'' and ''sorghum, grain'' to ''sorghum, grain, grain.'' Also in § 180.409, EPA is revising ''cattle, kidney and liver'' to ''cattle, kidney'' and ''cattle, liver;'' ''goats, kidney and liver'' to ''goat, kidney'' and ''goat, liver;'' ''hogs, kidney and liver'' to ''hog, kidney'' and ''hog, liver;'' ''horses, kidney and liver'' to ''horse, kidney'' and ''horse, liver;'' and ''sheep, kidney and liver'' to ''sheep, kidney'' and ''sheep, liver.''

5. *Profenofos—Comment by Private Citizen*. A comment was received from a private citizen who inquired whether the proposal of April 15, 2002 revised the tolerance expression in 40 CFR 180.404. The commenter noted that a change in tolerance expression to profenofos *per se* was recommended in the profenofos IRED of August, 2000 because profenofos is considered a residue of toxicological concern.

Agency Response. EPA did not propose to revise the tolerance expression in 40 CFR 180.404 at this time. The change in the tolerance expression as recommended in the IRED for profenofos will be proposed in the near future.

EPA is revoking the tolerances in 40 CFR 180.404 for hogs, fat; hogs, mbyp; and hogs, meat. The Agency concluded that there is no reasonable expectation of finite residues for hog commodities (meat, fat, and meat byproducts) for profenofos based on feeding studies and the tolerances are no longer needed according to 40 CFR 180.6(a)(3).

Also, EPA is revoking the tolerance in § 180.404 for cottonseed hulls because the tolerance is no longer needed. Based on a cottonseed processing study, EPA determined that the current and interim cottonseed tolerances are each adequate to cover cottonseed hulls.

No comments were received by the Agency concerning the following.

6. *Acephate*. EPA is revoking the tolerances in 40 CFR 180.108 for combined residues of acephate and its cholinesterase-inhibiting metabolite O,S-dimethylphosphura-midothioate in or on grass (pasture and range) and grass hay because no active registrations exist which cover those commodities. On April 17, 1998 (63 FR 19254)(FRL–5782–6), July 8, 1998 (63 FR 36897)(FRL–5797–1), July 22, 1998 (63 FR 39287)(FRL–5799–9), and January 27, 1999 (64 FR 4099)(FRL–6051–8), EPA had published notices in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from registrants to cancel or amend certain product registrations and delete certain acephate uses, including the grass pasture and rangeland use for acephate. EPA approved the registrants' requests for voluntary cancellation of those specific product registrations and

deletion of certain uses, including the use for grass (pasture and rangeland), and allowed a period of 18 months (in the 1998 notices) and 12 months (in the 1999 notice) for registrants to sell and distribute those specific existing stocks affected. The Agency believes that end users have had sufficient time (at least 18 months beyond the endpoint for sale and distribution by registrants) to exhaust those existing stocks and for treated commodities to have cleared the channels of trade.

7. *Amitraz*. Apple and horse commodity tolerances are currently codified in 40 CFR 180.287 at 0 ppm; i.e., no finite tolerance is established for apple and horse commodities for amitraz. Also, there is currently no registered use of amitraz on apples or horse commodities. Because the tolerances are no longer needed, the Agency is revoking the tolerances in 40 CFR 180.287 for residues of amitraz and its metabolites in or on apples; horses, fat; horses, mbyp; and horses, meat. The EPA believes that sufficient time has passed for the possibility of any stocks to have been exhausted and for the possibility of any treated commodities to have cleared channels of trade.

Also, there is a pending petition to establish tolerances for the dermal use of amitraz. Currently, there are six tolerances in 40 CFR 180.287 for goats, fat; goats, mbyp; goats, meat; sheep, fat; sheep, mbyp; and sheep, meat at 0 ppm. EPA has been able to identify no past or current registrations of amitraz for use on goat or sheep commodities. However, due to the pending petition, EPA is not taking final action on those six tolerances at this time. EPA believes that there is no risk of exposure to amitraz under these tolerances because the tolerance permits no detectable amount of the pesticide chemical to remain on the raw agricultural commodity when it is offered for shipment and therefore the tolerances present a reasonable certainty of no harm to human health. In accordance with FQPA, the Agency considers those six goat and sheep tolerances at 0 ppm to be reassessed.

In addition, the Agency is revising commodity terminology in 40 CFR 180.287 to conform to current Agency practice as follows: ''beeswax'' to ''honeycomb.'' On June 21, 2002 (67 FR 42391)(FRL–7180–1), EPA published a final rule in the **Federal Register** concerning tolerance nomenclature, which revised the terminology of certain commodity terms listed under 40 CFR part 180, subpart C in order to establish a uniform listing, including the entry for ''hop, dried cone'' to ''hop, dried cones.''

8. *Carbaryl*. In the U.S., there are no current uses of the insecticide carbaryl in or on cotton, forage; barley; oats; or rye. The Agency approved the registrant's requests for voluntary amendment of various carbaryl product labels to delete use on oats and rye in 1996, barley in 1997, and cotton forage in 1999. Therefore, EPA is revoking the tolerances in 40 CFR 180.169 for residues of carbaryl, including its hydrolysis product 1-naphthol, calculated as 1-naphthyl N-methylcarbamate in or on barley, grain; barley, green fodder; barley, straw; cotton, forage; oat, fodder, green; oat, grain; oat, straw; rye, fodder, green; rye, grain; and rye, straw. The Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

9. *Chlorpyrifos*. Because beans, lima, forage; beans, snap, forage; sorghum milling fractions (sorghum flour is used exclusively in the U.S. as a component for drywall, not as either a human or animal feed item); bean, forage; and pea forage; are no longer considered to be significant feed items, the tolerances are no longer needed. Therefore, EPA is revoking the tolerances in 40 CFR 180.342(a)(1) for beans, lima, forage; beans, snap, forage; and sorghum milling fractions and in § 180.342(a)(2) for bean, forage and pea forage.

Because there are currently no current registered uses for combined residues of chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol on dates, mushrooms, and seed and pod vegetables; and for residues of chlorpyrifos on caneberries and sugarcane, EPA is revoking the tolerances for mushrooms and seed and pod vegetables in 40 CFR 180.342(a)(1), caneberries and sugarcane in § 180.342(a)(2), and dates in § 180.342(c)(1). EPA believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

In addition, the Agency is revising commodity terminology to conform to current Agency practice as follows: In 40 CFR 180.342(a)(1) ''beans, snap'' to ''bean, snap, succulent;'' in 40 CFR 180.342(a)(2) ''sweet potato'' to ''sweet potato, roots;'' and in 40 CFR 180.342(c)(1) ''grapes'' to ''grape'' and ''leeks'' to ''leek.''

On June 21, 2002 (67 FR 42391)(FRL–7180–1), EPA published a final rule in the **Federal Register** concerning tolerance nomenclature, which revised the terminology of certain commodity terms listed under 40 CFR part 180, subpart C in order to establish a uniform listing, including the entries for ''sorghum, fodder'' to ''sorghum, grain, stover''; and ''sorghum, grain'' to ''sorghum, grain, grain.''

10. *Cryolite*. EPA is revoking tolerances in 40 CFR 180.145 for residues of fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on beets, roots; radish, roots; rutabaga, roots; and turnip, roots. The registrant(s) of cryolite requested voluntary cancellation for use on beets, radishes, rutabagas, and turnips. Rutabagas were removed from cryolite labels prior to 1988. Beets were removed from cryolite labels in 1988. On September 25, 1996 a FIFRA section 6(f)(1) notice of receipt of a request to voluntarily delete radish and turnip uses from cryolite registrations was published in the **Federal Register** (61 FR 50294) (FRL–5394–2), with a use deletion date of December 24, 1996. EPA believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

11. *Disulfoton*. On June 4, 1997, EPA published a notice in the **Federal Register** (62 FR 30578) (FRL–5715–8) under section 6(f)(1) of FIFRA announcing its receipt of requests for amendments to delete disulfoton uses for pineapples, rice, and sugar beets. EPA approved the request, effective December 1, 1997, and allowed the registrants to sell or distribute products under the previously approved labeling for 18 months (June 1, 1999). More than two and one-half years has passed, which the Agency believes to be sufficient time for exhaustion of those stocks and for treated commodities to have cleared channels of trade. Because no active registrations exist for use of disulfoton in or on those commodities, the EPA is revoking the tolerances in 40 CFR 180.183(a)(1) for residues of disulfoton and its cholinesterase-inhibiting metabolites in or on beets, sugar, roots; beets, sugar, tops; pineapples; rice; and rice, straw; and the tolerances in § 180.183(a)(2) for residues of disulfoton, calculated as demeton, in dehydrated sugar beet pulp and in pineapple bran.

The commodity ''bean, vines'' is no longer considered to be a significant animal feed item and the tolerance is no longer needed. Therefore, EPA is revoking the tolerance for bean, vines in 40 CFR 180.183.

On February 7, 2001, EPA published a notice in the **Federal Register** (66 FR 9317)(FRL–6765–9) under section 6(f)(1) of FIFRA announcing its receipt of requests for amendments to delete disulfoton uses for corn, oats, and pecans. EPA approved the request, effective March 9, 2001, and allowed the registrants to sell or distribute product under the previously approved labeling for 18 months (ending September 9, 2002). EPA believes that those stocks should be exhausted within 12 months of that date (September 9, 2003). Because no active registrations exist for the use of disulfoton in or on those commodities, EPA is revoking the tolerances in 40 CFR 180.183(a)(1) for the combined residues of disulfoton and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on corn, field, fodder; corn, field, forage; corn, grain; corn, pop; corn, pop, fodder; corn, pop, forage; corn, sweet, fodder; corn, sweet, forage; corn, sweet, grain (K+CWHR); oats, fodder, green; oats, grain; oats, straw; and pecans with an expiration, revocation date of December 9, 2003. The Agency believes that this revocation date permits users to exhaust stocks and allows sufficient time for passage of treated commodities through the channels of trade.

In addition, EPA is revising commodity terminology in 40 CFR 180.183(a) to conform to current Agency practice as follows: ''beans, dry'' to ''bean, dry, seed;'' ''beans, lima'' to ''bean, lima;'' ''coffee beans'' to ''coffee, bean;'' ''corn, field, fodder'' to ''corn, field, stover;'' ''corn, pop, fodder'' to ''corn, pop, stover;'' ''corn, sweet, fodder'' to ''corn, sweet, stover;'' ''cottonseed'' to ''cotton, undelinted seed;'' ''hops'' to ''hop, dried cones;'' ''oats, grain'' to ''oat, grain;'' ''oats, straw'' to ''oat, straw;'' ''peas'' to ''pea;'' ''peas, vines'' to ''pea, field, vines;'' ''pecans'' to ''pecan;'' ''peppers'' to ''pepper;'' ''potatoes'' to ''potato;'' ''sorghum, fodder'' to ''sorghum, grain, stover;'' ''soybeans, forage'' to ''soybean, forage;'' ''soybeans, hay'' to ''soybean, hay;'' ''tomatoes'' to ''tomato;'' and ''wheat, fodder, green'' to ''wheat, hay.'' Also in 180.183, EPA is revising ''corn, grain'' to ''corn, field, grain;'' ''corn, pop'' to ''corn, pop, grain;'' ''corn, sweet, grain (K+CWHR)'' to ''corn, sweet, kernel plus cob with husks removed;'' ''oats, fodder, green'' to ''oat, hay;'' and ''sugarcane'' to ''sugarcane, cane.''

On June 21, 2002 (67 FR 42391)(FRL–7180–1), EPA published a final rule in the **Federal Register** concerning tolerance nomenclature, which revised the terminology of certain commodity terms listed under 40 CFR part 180, subpart C in order to establish a uniform listing, including the entries for ''peanuts'' to ''peanut;'' ''sorghum, grain'' to ''sorghum, grain, grain;'' and ''soybeans'' to ''soybean.''

12. *Ethalfluralin*. When EPA establishes tolerances for residues in or on raw agricultural commodities, consideration must be given to the possible residues of those pesticides in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, the EPA can conclude that (1) finite residues will exist in meat, milk, poultry, and/or eggs; (2) there is a reasonable expectation that finite residues will exist; or (3) there is a reasonable expectation that finite residues will not exist. In 1994, the ethalfluralin RED recommended revocation for egg, milk, fat, meat, and meat byproduct tolerances based on animal metabolism data (submitted since the time that the tolerances were originally established) from which EPA concluded that there is no reasonable expectation of finite residues for meat, fat, and meat byproduct commodities and the associated tolerances are not required according to 40 CFR 180.6(a)(3). Those feeding studies used exaggerated amounts of the pesticide and did not show measurable residues in animal tissues. Therefore, the Agency is revoking the tolerances in 40 CFR 180.416 for residues of ethalfluralin in or on goats, fat; goats, meat; and goats, mbyp.

13. *Ethoprop*. EPA is revoking the tolerance for okra in 40 CFR 180.262(c). There is currently no registered use of ethoprop on okra. EPA has not been able to identify a past registration of ethoprop for use on okra since an regional tolerance was established in 1987 and believes that the use was canceled years ago. Therefore, the Agency believes that sufficient time has passed for stocks to have been exhausted and for treated commodities to have cleared channels of trade.

14. *Fluvalinate*. With the exception of honey, which is linked to the active registration for use in/on beehives, there are no active food-use registrations for the insecticide fluvalinate. The use of fluvalinate on cotton was voluntarily canceled in 1991. Cotton had been the only animal feed use for fluvalinate; therefore, the animal commodity tolerances are no longer needed. EPA believes that sufficient time has passed for exhaustion of those stocks and for treated commodities to have cleared channels of trade. Therefore, EPA is revoking the tolerances in 40 CFR 180.427(a) for residues of fluvalinate in or on cattle, fat; cattle, mbyp; cattle, meat; cottonseed; cottonseed hulls; cottonseed oil (crude and refined); eggs; goat, fat; goat, mbyp; goat, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; milk; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; and sheep, meat.

Also, a tolerance for coffee was established in 1989 based on a FIFRA section 24(c) registration and use of fluvalinate on coffee was restricted to Hawaii. In May 1990, the registration was canceled. Therefore, the Agency is revoking the tolerance in 40 CFR 180.427(c) for residues of fluvalinate in or on coffee.

15. *Metribuzin*. The Agency is revoking the tolerance in 40 CFR 180.332 for residues of metribuzin and its triazinone metabolites in or on potato waste, processed (dried). Because potato waste, processed (dried) is no longer considered a significant feed item, the tolerance is no longer needed. The EPA had issued a RED for metribuzin, approved on May 20, 1997, but the potato waste, processed (dried) tolerance was since identified not to be a significant feed item.

16. *Oxamyl*. Because peanut, forage; pineapples, forage; and soybean straw commodities are no longer considered to be significant feed items, the associated tolerances are no longer needed. Therefore, EPA is revoking the tolerances in 40 CFR 180.303 for the sum of the residues of the insecticide oxamyl (methylN-N-dimethyl-N-[(methylcarbamoyl)-oxy]-1-thiooxamimidate) and its oxime metabolite N,N-dimethyl-N-hydroxy-1-thiooxamimidate calculated as oxamyl in or on peanut, forage; pineapple, forage; and soybean straw.

17. *Phorate*. Because these commodities are no longer considered significant livestock feed items and therefore the associated tolerances are no longer needed, EPA is revoking the tolerances in 40 CFR 180.206 for combined residues of phorate and its cholinesterase-inhibiting metabolites in or on bean, vines and peanut, vines.

Because current product labels do not allow feeding livestock with peanut hay treated with phorate, the tolerance is no longer needed. Therefore, the Agency is revoking the tolerance in 40 CFR 180.206 for peanuts, hay. In addition, sufficient sugar beet processing data are available that indicate phorate residues of concern do not concentrate in dried sugar beet pulp. Therefore, that tolerance is no longer needed and EPA is revoking the tolerance in 40 CFR 180.206 for beet, sugar, dried pulp.

18. *Phosalone*. EPA is revoking the tolerance in 40 CFR 180.263 for residues of phosalone in or on almond, hulls because that tolerance is no longer needed. In 1986, 1987, and 1991,

registrations for phosalone use on almonds were canceled. There are no U.S. registrations. While a tolerance for almonds exists for importation purposes only, the tolerance for ''almond, hulls'' is not needed for import purposes. Almond hulls are a livestock feed item and are not imported, nor do countries with registered uses for phosalone on almonds export significant quantities of livestock commodities to the U.S.

19. *Phosmet*. EPA is revoking the tolerances in 40 CFR 180.261 for the sum of the residues for N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog N-(mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorothioate) in or on corn, fresh (inc. sweet K+CWHR); corn, fodder; corn, forage; and corn, grain because no active registrations exist which cover those commodities. Previously, on April 17, 1996 (61 FR 16779)(FRL-5360-5), EPA had published a notice in the **Federal Register** under section 6(f)(1) of FIFRA announcing its receipt of requests from the registrant to delete certain product label uses, including the corn use for phosmet. EPA approved the registrant's request for an amendment to delete the corn use from its label effective July 16, 1996, and allowed the registrant to sell and distribute affected existing stocks for 18 months; i.e., until January 16, 1998. EPA believes that end users have now had sufficient time (more than 4 years) to exhaust those stocks and for treated commodities to have cleared channels of trade.

20. *Propiconazole*. EPA is revoking the tolerance in 40 CFR 180.434 for grass, seed screenings because that commodity is no longer considered a significant feed item and therefore the tolerance is no longer needed. Also, because a tolerance for stonefruit group at 1.0 ppm already exists for the combined residues of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid (expressed as parent compound) in 40 CFR 180.434, the EPA believes that each of the individual tolerances in § 180.434 at 1.0 ppm for apricots, nectarines, peaches, plums, and prunes, fresh are unnecessary duplicates and therefore is removing them. The use of propiconazole on those commodities will be covered by the remaining group tolerance. For reassessment counting purposes, the Agency will not count removal of those fruit tolerances as reassessments because the use will remain covered by the existing ''stonefruit group'' tolerance. In addition, the EPA is revising the commodity terminology for in 40 CFR 180.434 to conform to current Agency practice as follows: ''grass, hay (straw)'' to ''grass, hay'' and ''grass, straw;''.

21. *Tetrachlorvinphos*. EPA is revoking tolerances in 40 CFR 180.252(a) for residues of tetrachlorvinphos in or on alfalfa and sheep, fat. All registered uses of tetrachlorvinphos on food or feed plant commodities, including alfalfa, were canceled in 1987. In June 1995, EPA had issued a RED for tetrachlorvinphos which recommended revoking the tolerances for ''alfalfa'' and ''sheep, fat'' because there were no registered uses associated with those commodities. On August 27, 1997 (62 FR 45416) (FRL–5737–4), the EPA published the registrant's request for voluntary cancellation for the remaining tetrachlorvinphos product that could have had the sheep use. EPA believes that end users have now had sufficient time to exhaust those stocks and for treated commodities to have cleared channels of trade.

22. *Thiram*. EPA is revoking the tolerances in 40 CFR 180.132 for celery, onions (dry bulb), tomatoes, and ''bananas (from preharvest and postharvest application) of which not more than 1 part per million shall be in the pulp after peel is removed and discarded.'' On November 6, 1996, the EPA published a notice in the **Federal Register** (61 FR 57419)(FRL–5570–5) under section 6(f)(1) of FIFRA announcing its receipt of requests for amendments to delete certain uses, including bananas, celery, onions (dry bulb), and tomatoes from the thiram technical label, effective February 4, 1997. The Agency allowed a period of 18 months for the registrant to sell or distribute product under previously approved labeling. The Agency believes that end users have had sufficient time to exhaust product under the previously approved labeling and for treated commodities to have cleared channels of trade. For tolerance reassessment counting purposes, the EPA will count bananas as 2 tolerances (banana, with peel, pre- and post-harvest at 7.0 ppm and banana, pulp at 1.0 ppm). In addition, the EPA is revising commodity terminology in 40 CFR 180.132 to conform to current Agency practice as follows: ''apples'' to ''apple,'' ''peaches'' to ''peach,'' and ''strawberries'' to ''strawberry.''

23. *Tribufos*. EPA is revoking the tolerance in 40 CFR 180.272 for residues of tribufos (S,S,S-tributyl phosphorotrithioate) in or on cottonseed hulls because the tolerance is no longer needed, based on a cottonseed processing study, which showed that while residues of tribufos in cottonseed had been present, no concentration of tribufos residues occurred during normal processing procedures in cottonseed meal, hulls, crude and refined oils.

B. What is the Agency's Authority for Taking this Action?

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

EPA is revoking certain tolerances for disulfoton with an expiration/revocation date of December 9, 2003. The Agency is revoking most ethion tolerances with an expiration/revocation date of October 1, 2008. The Agency is also revoking fenthion tolerances for cattle with an expiration/revocation date of April 1, 2006 and fenthion tolerances for hogs and milk with an expiration/revocation date of April 1, 2003.

However, other actions (including any commodity terminology revisions concerning tolerances for disulfoton, ethion, or fenthion, as well as revocations and commodity terminology revisions concerning tolerances for other pesticides mentioned in this final rule) become effective 90 days following publication of this final rule in the **Federal Register**. EPA has delayed the effectiveness of these revocations for 90 days following publication of this final rule to ensure that all affected parties receive notice of EPA's actions. Consequently, for these other actions, the effective date is October 29, 2002. For this final rule, tolerances that were revoked because registered uses did not exist concern uses which have been canceled for many years. Therefore, commodities containing these pesticide residues should have cleared the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2002 to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996. EPA is also required to assess the remaining tolerances by August, 2006. As of July 17, 2002, EPA has reassessed over 5,680 tolerances. This final rule revokes 140 tolerances, four of which were previously counted as reassessed for cryolite during a registration decision action on December 5, 1997 (62 FR 64294) (FRL–5756–5), three of which were previously counted as reassessed for ethalfluralin during a registration decision action on January 17, 2002 (67 FR 2333) (FRL–6818–6), one of which was previously reassessed in the metribuzin RED of 1997, and two tolerances were previously counted as reassessed for disulfoton in a notice published on May 22, 2002 (67 FR 35991)(FRL–7178–9). Of the 140 tolerance revocations, 130 tolerances are considered reassessed in this final rule. Additionally, EPA considered six goat and sheep tolerances at 0 ppm for amitraz to be reassessed. Therefore, a total of 136 tolerance reassessments count toward the August, 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996. However, the Agency does not consider the removal of 5 propiconazole and 2 pirimiphos-methyl tolerances as reassessments and they are not counted as such in this final rule.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at http://www.epa.gov/. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

IV. Objections and Hearing Requests

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0155 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 30, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Objection/hearing fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0155, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of

the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Regulatory Assessment Requirements

This final rule will revoke tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 22, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.108 [Amended]

2. Section 180.108 is amended by removing the entries for ''Grass (pasture and range)'' and ''Grass hay'' from the table in paragraph (a)(1).

3. Section 180.132 is revised to read as follows:

§ 180.132 Thiram; tolerances for residues.

(a) *General*. Tolerances for residues of the fungicide thiram (tetramethyl thiuram disulfide) in or on raw agricultural commodities are established as follows:

Commodity	Parts per million
Apple	7.0
Peach	7.0
Strawberry	7.0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.145 [Amended]

4. Section 180.145 is amended by removing the entries for ''Beet, roots''; ''Radish, roots''; ''Rutabaga, roots''; and ''Turnip, roots'' from the table in paragraph (a)(1).

§ 180.169 [Amended]

5. Section 180.169 is amended by removing the entries for ''Barley, grain''; ''Barley, green fodder''; ''Barley, straw''; ''Cotton, forage''; ''Oat, fodder, green''; ''Oat, grain''; ''Oat, straw''; ''Rye, fodder, green''; ''Rye, grain''; and ''Rye, straw'' from the table in paragraph (a)(1).

6. Section 180.173 is amended by revising the table in paragraph (a) to read as follows:

§ 180.173 Ethion; tolerances for residues.

(a) *General*. * * *

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat	2.5	None
Cattle, meat (fat basis)	2.5	None
Cattle, meat byproducts	1.0	None
Citrus, dried pulp	10.0	10/1/08
Fruit, citrus	2.0	10/1/08
Goat, fat	0.2	10/1/08
Goat, meat	0.2	10/1/08
Goat, meat byproducts	0.2	10/1/08
Hog, fat	0.2	10/1/08
Hog, meat	0.2	10/1/08
Hog, meat byproducts	0.2	10/1/08
Horse, fat	0.2	10/1/08
Horse, meat	0.2	10/1/08
Horse, meat byproducts]	0.2	10/1/08
Milk fat (reflecting (N) residues in milk)	0.5	None
Sheep, fat	0.2	10/1/08
Sheep, meat	0.2	10/1/08
Sheep, meat byproducts	0.2	10/1/08

* * * * *

7. Section 180.183 is amended by revising paragraph (a) to read as follows:

§ 180.183 [O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate; tolerances for residues.

(a) *General*. Tolerances are established for the combined residues of the insecticide O,O-diethyl S-[2-(ethylthio)ethyl] phosphorodithioate and its cholinesterase-inhibiting metabolites, calculated as demeton, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Barley, grain	0.75	None
Barley, straw	5.0	None
Bean, dry, seed	0.75	None
Bean, lima	0.75	None
Bean, snap	0.75	None
Broccoli	0.75	None
Brussels sprouts	0.75	None
Cabbage	0.75	None
Cauliflower	0.75	None
Coffee, bean	0.3	None
Corn, field, forage	5.0	12/9/03
Corn, field, grain	0.3	12/9/03
Corn, field, stover	5.0	12/9/03
Corn, pop, forage	5.0	12/9/03
Corn, pop, grain	0.3	12/9/03
Corn, pop, stover	5.0	12/9/03
Corn, sweet, forage	5.0	12/9/03
Corn, sweet, kernel plus cob with husks removed	0.3	12/9/03

Commodity	Parts per million	Expiration/Revocation Date
Corn, sweet, stover	5.0	12/9/03
Cotton, undelinted seed	0.75	None
Hop, dried cones	0.5	None
Lettuce	0.75	None
Oat, grain	0.75	12/9/03
Oat, hay	5.0	12/9/03
Oat, straw	5.0	12/9/03
Peanut	0.75	None
Pea	0.75	None
Pea, field, vines	5.0	None
Pecan	0.75	12/9/03
Pepper	0.1	None
Potato	0.75	None
Sorghum, forage	5.0	None
Sorghum, grain, grain	0.75	None
Sorghum, grain, stover	5.0	None
Soybean	0.1	None
Soybean, forage	0.25	None
Soybean, hay	0.25	None
Spinach	0.75	None
Sugarcane, cane	0.3	None
Tomato	0.75	None
Wheat, hay	5.0	None
Wheat, grain	0.3	None
Wheat, straw	5.0	None

* * * * *

§ 180.206 [Amended]

8. Section 180.206 is amended by removing the entries for ‘‘Bean, vines’’; ‘‘Beet, sugar, dried pulp’’; ‘‘Peanut, hay’’; and ‘‘Peanut, vines’’; from the table in paragraph (a).

9. Section 180.214 is amended by revising the table in paragraph (a) to read as follows:

§ 180.214 Fenthion; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million	Expiration/Revocation Date
Cattle, fat	0.1	4/1/06
Cattle, meat	0.1	4/1/06
Cattle, meat byproducts	0.1	4/1/06
Hog, fat	0.1	4/1/03
Hog, meat	0.1	4/1/03
Hog, meat byproducts	0.1	4/1/03
Milk	0.01	4/1/03

* * * * *

§ 180.252 [Amended]

10. Section 180.252 is amended by removing from the table in paragraph (a)(1) the entries for ‘‘Alfalfa’’ and ‘‘Sheep, fat.’’

§ 180.261 [Amended]

11. Section 180.261 is amended by removing from the table in paragraph (a) the entries for ‘‘Corn, fresh (inc. sweet K+CWHR)’’; ‘‘Corn, fodder’’; ‘‘Corn, forage’’; and ‘‘Corn, grain.’’

12. Section 180.262 is amended by removing the text of paragraph (c) and reserving paragraph (c) with a heading, to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

* * * * *

(c) *Tolerances with regional registrations.* [Reserved]

* * * * *

§ 180.263 [Amended]

13. Section 180.263 is amended by removing the entry for ‘‘Almond, hulls’’ from the table.

§ 180.272 [Amended]

14. Section 180.272 is amended by removing from the table in paragraph (a) the entry for ‘‘Cotton, hulls.’’

15. Section 180.287 is amended as follows:

i. By redesignating the existing text as paragraph (a) and adding a heading.

ii. By removing the entries from table in newly designated paragraph (a) for ‘‘Apple’’; ‘‘Beeswax’’; ‘‘Hop, dried cone’’; ‘‘Horse, fat’’; ‘‘Horse, meat byproducts’’; and ‘‘Horse, meat.’’

iii. By alphabetically adding entries for ‘‘Honeycomb’’ and ‘‘Hop, dried cones’’ to the table in newly designated paragraph (a).

iv. By adding and reserving with headings paragraphs (b), (c), and (d).

§ 180.287 Amitraz; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * *	*
Honeycomb	6.0
Hop, dried cones	60.0
* * * *	*

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.303 [Amended]

16. Section 180.303 is amended by removing from the table in paragraph (a)(1) the entries for ''Peanut, forage''; ''Pineapple, forage''; and ''Soybean straw.''

17. Section 180.315 is amended by revising the table in paragraph (a) to read as follows:

§ 180.315 Methamidophos; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Broccoli	1.0
Brussels sprouts	1.0
Cabbage	1.0
Cauliflower	1.0
Cotton, undelinted seed	0.1
Cucumber	1.0
Eggplant	1.0
Lettuce	1.0
Melon	0.5
Pepper	1.0
Potato	0.1
Tomato	1.0

* * * * *

§ 180.332 [Amended]

18. Section 180.332 is amended by removing from the table in paragraph (a) the entry for ''Potato waste, processed (dried).''

19. Section 180.342 is amended as follows:

i. By removing the entries for ''Bean, lima, forage''; ''Bean, snap, forage''; ''Mushroom''; ''Seed and pod vegetables'' and ''Sorghum milling fractions'' from the table in paragraph (a)(1).

ii. By changing ''Bean, snap'' to ''Bean, snap, succulent''; ''Sorghum, fodder'' to ''Sorghum, grain, stover''; and ''Sorghum, grain'' to ''Sorghum, grain, grain''; in the table in paragraph (a)(1).

iii. By removing the entries for ''Bean, forage''; ''Caneberries''; ''Pea forage''; and ''Sugarcane'' from the table in paragraph (a)(2).

iv. By changing ''Sweet potato'' to ''Sweet potato, roots'' in the table in paragraph (a)(2).

v. By revising paragraph (c)(1).

The section, as amended, reads as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) *Tolerances with regional registrations.* (1) Tolerances with regional registration, as defined in § 180.1(n), are established for the combined residues of chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the following food commodities:

Commodity	Parts per million
Asparagus	5.0
Grape	0.5
Leek (of which no more than 0.2 ppm is chlorpyrifos)	0.5

* * * * *

§ 180.404 [Amended]

20. Section 180.404 is amended by removing the entries for ''Cotton, hulls''; ''Hog, fat''; ''Hog, meat byproducts''; and ''Hog, meat'' from the table in paragraph (a).

21. Section 180.409 is amended by revising the table in paragraph (a)(1); removing paragraph (a)(2); and redesignating paragraph (a)(3) as paragraph (a)(2) to read as follows:

§ 180.409 Pirimiphos-methyl; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Cattle, fat	0.2
Cattle, kidney	2.0
Cattle, liver	2.0
Cattle, meat	0.2
Cattle, meat byproducts	0.2
Corn	8.0
Goat, fat	0.2
Goat, kidney	2.0
Goat, liver	2.0
Goat, meat byproducts	0.2
Hog, fat	0.2
Hog, kidney	2.0
Hog, liver	2.0
Hog, meat byproducts	0.2
Horse, fat	0.2
Horse, kidney	2.0
Horse, liver	2.0
Horse, meat byproducts	0.2
Kiwifruit	5.0
Poultry, fat	0.2
Sheep, fat	0.2
Sheep, kidney	2.0
Sheep, liver	2.0
Sheep, meat byproducts	0.2
Sorghum, grain, grain	8.0

* * * * *

§ 180.416 [Amended]

22. Section 180.416 is amended by removing the entries for ''Goat, fat''; ''Goat, meat''; and ''Goat, meat byproducts'' from the table in paragraph (a).

23. Section 180.427 is amended by revising the table in paragraph (a); removing the text in paragraph (c); and reserving paragraph (c) with a heading to read as follows:

§ 180.427 Fluvalinate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Honey	0.05

* * * * *

(c) *Tolerances with regional registrations.* [Reserved]

* * * * *

§ 180.434 [Amended]

24. Section 180.434 is amended by revising the table in paragraph (a) as follows:

i. By removing the entries for ''Apricot,'' ''Grass, seed screenings,'' ''Nectarine,'' ''Peach,'' ''Plum,'' and ''Plum, prune, fresh.''

ii. By changing ''Grass, hay (straw)'' to ''Grass, hay'' and ''Grass, straw;''.

[FR Doc. 02–19104 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7252–4]

Michigan: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Michigan final authorization of revisions to its hazardous waste management program under the Resource Conservation and Recovery Act (RCRA). EPA published a proposed rule on February 28, 2002 at 67 *FR* 9225 and provided for public comment. The public comment period ended on April 15, 2002. We received comments from two commenters, addressed below. No further opportunity for comment will be provided. EPA has determined that Michigan's revisions satisfy all requirements for final authorization.

EFFECTIVE DATE: Final authorization for the revisions to Michigan's hazardous waste management program will become effective on July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Feigler, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Waste, Pesticides and Toxics Division (DM–7J), 77 W. Jackson Blvd., Chicago, Illinois 60604, phone number: (312) 886–4179; or Ms. Kimberly Tyson, Michigan Department of Environmental Quality, 608 W. Allegan, Hannah Building, Lansing, Michigan, phone number: (517) 373–2487.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Were the Comments and Responses to EPA's Proposal?

On February 28, 2002 (67 *FR* 9225), EPA published a proposed rule announcing the availability for public comment of Michigan's application for revisions to its authorized hazardous waste management program. EPA also announced that it had reviewed the application and determined that these revisions satisfy all requirements needed to qualify for final authorization. EPA received written comments from two commenters during the public comment period. The significant issues raised by the commenters and EPA's responses are summarized below.

I. Comments From the Michigan Department of Environmental Quality

Comment #1: The Michigan Department of Environmental Quality (MDEQ) submitted a comment objecting to EPA's determination that Michigan is not authorized to carry out its hazardous waste program in Indian country within the state, as defined in 18 U.S.C. 1151. MDEQ notes that the original application for the RCRA base program included a statement from Michigan's Office of Attorney General that the Michigan "does not, at this time, seek any federal authorization over "Indian lands" within Michigan." MDEQ does not agree that the term "Indian country" means the same as "Indian lands." It interprets the term "Indian lands" to mean either land held in trust by the federal government for the benefit of a federally recognized Indian tribe or Indian-owned lands within Indian reservations.

Response: EPA disagrees with the interpretation that there is a difference between the terms "Indian lands" and "Indian country" for purposes of implementing EPA programs. In the context of RCRA, EPA's interpretation that the two terms are synonymous has been specifically approved by the Ninth Circuit Court of Appeals in *Washington Dep't of Ecology* v. *U.S. EPA*, 752 F.2d 1465, 1467, n.1 (9th Cir.1985). The Court stated:

> In the course of this litigation, EPA has regarded [the term "Indian lands"] as synonymous with "Indian country," which is defined at 18 U.S.C.1151 to include all lands (including fee lands) within Indian reservations, dependent Indian communities and Indian allotments to which Indians hold title. We accept this definition as a reasonable marker of the geographic boundary between state and federal authority.

EPA has consistently interpreted "Indian country" to be the same as "Indian lands." For example, EPA's regulations implementing RCRA Subtitle D define "Indian lands" to be the same as "Indian country." 40 CFR 258.2. *See also* 40 CFR 144.3 (regulations under the Safe Drinking Water Act define "Indian lands" to be the same as "Indian country"). In addition, it is clear that EPA has used the terms "Indian country" and "Indian lands" interchangeably when addressing authorization of state programs under RCRA Subtitle C. For some examples of this practice, *see* 65 *FR* 46606, 610 (July 31, 2000) (Virginia); 65 *FR* 33774, 776 (May 25, 2000) (Minnesota); 65 *FR* 29973, 978 (May 10, 2000) (West Virginia); 65 *FR* 26755 (May 9, 2000) (South Dakota); 64 *FR* 49673, 674, 680 (September 14, 1999) (Texas); 58 *FR* 8232 (Feb. 12, 1993) (Utah); 51 *FR* 3782 (January 30, 1986) (Washington).

Outside of the environmental context, the term "Indian lands" has frequently been used to refer to more than lands held in trust or Indian-owned land. For example, Congress has defined "Indian lands" to include "Indian country" in the Indian Tribal Regulatory Reform and Business Development Act of 2000 (25 U.S.C. 4302(4)) and in the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3653(2), and it defined "Indian lands" to include all lands within the limits of any Indian reservation in the Indian Gaming Regulatory Act (25 U.S.C. 2703(4). Other agencies have adopted similar definitions of the term Indian lands. *See* 30 CFR 700.5 (adopted by the Department of Interior under the Surface Mining Control and Reclamation Act, "Indian lands" includes all lands within the exterior boundaries of any federal Indian Reservation) and 25 CFR 502.12 (adopted by the Indian Gaming Commission under the Indian Gaming Regulatory Act, "Indian lands" include "land within the limits of an Indian Reservation").

Comment #2: MDEQ also stated that EPA, relying upon its position on "Indian lands," has asserted that the state lacks implementing authority over non-Indian facilities on non-Indian lands. In some cases, these assertions have even encompassed facilities over which the EPA has explicitly delegated authority to the state.

Response: EPA takes the position that an EPA-approved state program does not apply in Indian country (including any non-Indian facilities in Indian country) unless the state has expressly demonstrated authority and EPA has expressly approved the state to administer the EPA program there. EPA has not expressly authorized the State of Michigan under the federal environmental laws in Indian country.

Comment #3: MDEQ comments that EPA's interpretation of what lands constitute a reservation appears to be typically based solely on claims of tribes, even where those claims are clearly contrary to applicable laws and treaties, as well as all available historical evidence, and have never been established in a court of law.

Response: Under RCRA, EPA determines which lands constitute a reservation (and hence are within Indian country) on a case-by-case basis. EPA does not rely solely on the claims of tribes in making this determination. EPA generally consults with the Department of Interior in making this determination and takes into account all applicable information, including treaties and other laws.

Comment #4: MDEQ commented that the term "Indian country" appears in a criminal statute which predates RCRA. MDEQ also commented that EPA's interpretation diminishes the scope of Michigan's base RCRA program.

Response: The use of the term "Indian country" rather than the term "Indian lands" would not diminish Michigan's base program, since EPA treats those two terms as synonymous. The statutory definition of ''Indian country'' in 18 U.S.C. 1151, includes, *inter alia*, all lands within the limits of any Indian reservation, including non-member fee lands. EPA notes that, although the definition of Indian country appears in a criminal code, it generally applies to civil judicial and regulatory jurisdiction. *Alaska* v. *Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 (1998); *Decoteau* v. *District County Court*, 420 U.S. 425, 427 n.2 (1975). EPA also notes that its interpretation of the two terms has been held consistently even before Michigan received authorization for the base RCRA program in October of 1986. See *Washington Dep't of Ecology* v. *U.S. EPA*, 752 F. 2d 1465, 1467, n.1 (9th Cir. 1985).

II. Comments From a Second Commenter

Comment #5: The commenter asserts that EPA should have hosted a public hearing.

Response: Michigan received final authorization for its RCRA program on October 30, 1986, and is applying for a revision to its authorized program to reflect analogous modifications to the federal RCRA Subtitle C program. The regulations governing review of program revisions at 40 CFR part 271 do not require a hearing for authorization of revisions. On March 4, 1986, EPA promulgated amendments to 40 CFR 271.21 that eliminated public hearing requirements for revisions. The Agency discussed this elimination in the preamble to that rule:

> As discussed in the proposal, the new procedures do not require public hearings to be held in conjunction with EPA's authorization decisions. Since there is no legal requirement to provide for hearings on revision decisions and little public interest has been shown to date in attending hearings on initial authorization of state programs, we think the opportunity to provide written comments is adequate. Only one comment was received on the elimination of routine public hearings, and that comment favored the rule change. * * *

51 *FR* 7540 at 7541 (March 4, 1986).

Comment #6: The commenter asserts that Michigan's statutes in Public Act 451 Part 111 and 115 do not appear to provide authority for the land application of hazardous waste found in R 299.9801, Mich. Adm. Code.

Response: R 299.9801, Mich. Adm. Code, was adopted by the State of Michigan effective on December 28, 1985. The Attorney General of the State of Michigan submitted a statement, signed September 7, 1988, that certified that ''the laws of the State of Michigan provide adequate authority to carry out the revised program set forth in the revised ''Program Description'' submitted by the Michigan Department of Natural Resources.'' (The agency was later renamed the Department of Environmental Quality.) Page 3 of that statement, paragraph II.A, reads, ''State statutes and regulations define hazardous waste and impose management standards so as to control all the hazardous waste controlled under 40 CFR 261, 264, 265 and 266 as amended August 20, 1985 [50 *FR* 33541–43]* * *'' The statement further cites to the following statutory and regulatory authority, among others:

- 1979 Act 64, section 4(3); MCL 299.504(3); MSA 13.30(4)(3) (currently 1994 Act 451, section 11103(3); MCL 324.11103(3); MSA 13a.11103(3)).
- 1979 Act 64, section 26; MCL 299.526; MSA 13.30(26) (currently 1994 Act 451, section 11127; MCL 324.11127; MSA 13a.11127)).
- Mich. Admin. Code 1985 AACS, R 299.9101 *et seq.*

EPA reviewed the statement and the citations of authority and found them satisfactory, and authorization of the state program revisions became effective on April 24, 1989.

Comment #7: The commenter asserts that R 299.9801, Mich. Adm. Code, allows for the unregulated disposal of hazardous waste as a fertilizer ''product,'' whereas R 299.4111, Mich. Adm. Code, which pertains to plans to manage solid wastes as non-detrimental material managed for agricultural or silvicultural use, would heavily regulate non-hazardous waste.

Response: For the reasons discussed below, this authorization action is not the appropriate forum for these comments. As in the federal regulations at 40 CFR 266.20, R 299.9801, Mich. Admin. Code, exempts products that contain ''recyclable materials used in a manner constituting disposal'' (except K061 derived fertilizers [1]) from regulation only if they comply with applicable land disposal restriction (LDR) treatment standards or, where no treatment standards have been established, if they comply with the applicable prohibition levels or with section 3004(d) of RCRA, for each recyclable material that the products contain. EPA promulgated 40 CFR 266.20 on January 4, 1985 (*see* 50 *FR* 614) and revised this regulation on August 17, 1988 (*see* 53 *FR* 31138); September 6, 1989 (54 *FR* 36967); and August 24, 1994 (59 *FR* 8583). Michigan R 299.9801 is equivalent to the federal requirements and was previously authorized by EPA effective on October 30, 1986 (51 *FR* 36804, October 16, 1986) and on April 8, 1996 (61 *FR* 4742, February 2, 1996). The program revisions EPA is authorizing today do not affect the equivalency of R 299.9801.

Moreover, this comment is not relevant to this action because R 299.4111, Mich. Adm.Code, is not part of and has no effect upon this action or Michigan's authorized hazardous waste program. R 299.4111, which regulates plans for managing solid wastes as non-detrimental material managed for agricultural or silvicultural use, is not applicable to hazardous wastes because R 299.4110 exempts hazardous wastes from regulation as solid waste. R 299.4110 reads as follows:

> As provided by section 11506 of the act, the following wastes are ''other wastes regulated by statute'' and are exempt from regulation as solid wastes under part 115 of the act: (a) hazardous waste regulated under part 111 of the act.

By its terms, R 299.4111, Mich. Adm. Code, applies to solid wastes:

> (1) A person shall not apply sludges, ashes, or other *solid waste* to the land without having obtained a license under the act, unless the director has approved a plan for managing the wastes as nondetrimental materials that are appropriate for agricultural or silvicultural use or has otherwise authorized the application under part 31 of the act. *(Emphasis added)*

While both solid waste and its subset hazardous waste are regulated under the umbrella of RCRA, that statute contains different subchapters for governing the content, criteria and administration of hazardous waste programs (Subchapter III) and solid waste plans (Subchapter IV). EPA's authority to ''authorize'' a state to administer and enforce a ''hazardous waste program'' under Subchapter III of RCRA (*see* 3006 of RCRA, 42 U.S.C. 6926) does not constitute ''approval'' of either a state solid waste plan (*see* section 4007(a) of RCRA, 42 U.S.C. 6947(a), or a solid waste management facility permit program (*see* section 4005(c) of RCRA, 42 U.S.C. 6945(c)), under Subchapter IV of RCRA. The criteria for authorization of a state hazardous waste program are set part in section 3006 of RCRA. In reviewing an application under section 3006, EPA considers whether the state program (1) is equivalent to the federal program under Subchapter III, which governs hazardous waste; (2) is consistent with federal or ''state programs applicable in other states''; and (3) provides adequate enforcement of compliance with the requirements of

[1] EPA has proposed to remove the regulatory provision which currently exempts fertilizer made from K061 from having to meet applicable LDR standards in EPA's proposed rule ''Requirements for Zinc Fertilizers Made from Recycled Hazardous Secondary Materials,'' dated November 28, 2000. 65 *FR* 70985.

Subchapter III of RCRA. As part of this review, EPA considers whether the state is imposing requirements less stringent than those authorized under Subchapter III respecting the same matter as governed by such regulation. (*See* sections 3006 and 3009 of RCRA, 42 U.S.C. 6926 and 6929.) The commenter's request for EPA to review R 299.9801 for consistency with R 299.4111, which explicitly does not apply to hazardous waste, falls outside the scope of this action.

For the reasons set forth above, the comments on R 299.4111, Mich. Admin. Code, are not relevant to today's action.

C. What Decisions Have We Made in This Rule?

We conclude that Michigan's revisions to its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are granting Michigan final authorization to operate its hazardous waste program with the revisions described in the authorization application. Michigan now has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before the states are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Michigan, including issuing permits, until the state is granted authorization to do so.

D. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Michigan subject to RCRA will now have to comply with the authorized state requirements in lieu of the corresponding federal requirements in order to comply with RCRA. Additionally, such persons will now have to comply with any applicable federally-issued requirements, such as HSWA regulations issued by EPA for which the state has not received authorization, and RCRA requirements that are not supplanted by authorized state-issued requirements. Michigan continues to have enforcement responsibilities under its state hazardous waste management program for violations of its hazardous waste management program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the state has taken its own actions.

This action to approve these revisions does not impose additional requirements on the regulated community because the regulations for which Michigan is being authorized by today's action are already effective, and are not changed by today's action.

E. What Has Michigan Previously Been Authorized for?

Michigan initially received final authorization on October 16, 1986, effective October 30, 1986 (51 *FR* 36804–36805) to implement the RCRA hazardous waste management program. We granted authorization for changes to Michigan's program effective January 23, 1990 (54 *FR* 48608, November 24, 1989); effective June 24, 1991 (56 *FR* 18517, January 24, 1991); effective November 30, 1993 (58 *FR* 51244, October 1, 1993); effective January 13, 1995 (60 *FR* 3095, January 13, 1995); effective April 8, 1996 (61 *FR* 4742, February 8, 1996); effective November 14, 1997 (62 *FR* 61775, November 14, 1997); and effective June 1, 1999 (64 *FR* 10111, March 2, 1999).

F. What Changes Are We Authorizing With Today's Action?

On March 3, 2000, and April 3, 2001, Michigan submitted complete program revision applications seeking authorization of its changes in accordance with 40 CFR 271.21. We now make a final decision that Michigan's hazardous waste management program, as revised, satisfies all requirements under RCRA necessary to qualify for final authorization. Therefore, we grant Michigan final authorization for the program revisions described in the February 28, 2002 proposed rule (67 *FR* 9225). For further details, see the February 28, 2002 proposed rule.

G. Who Handles Permits After the Authorization Takes Effect?

Michigan will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization, until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions for which Michigan is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Michigan is not yet authorized.

H. What Is Codification and Is EPA Codifying Michigan's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized state rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart X, for this authorization of Michigan's program changes until a later date.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Michigan?

Michigan is not authorized to carry out its hazardous waste program in Indian country within the state, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Michigan;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian country.

Therefore, today's action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in Indian country. It is EPA's long-standing position that the term "Indian lands" used in past Michigan hazardous waste approvals is synonymous with the term "Indian country." *Washington Dep't of Ecology* v. *U.S. EPA,* 752 F.2d 1465, 1467, n.1 (9th Cir. 1985). *See* 40 CFR 144.3 and 258.2.

J. Administrative Requirements

The Office of Management and Budget has exempted RCRA authorizations from the requirements of Executive Order 12866 (58 *FR* 51735, October 4, 1993), and therefore this action is not subject to review by OMB. Furthermore, this action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 *FR* 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action authorizes state requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by state law. This authorization will effectively suspend the applicability of certain federal regulations in favor of Michigan's program, thereby eliminating duplicate requirements for handlers of hazardous waste in the state. Authorization will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This action does not have tribal implications within the meaning of Executive Order 13175 (65 *FR* 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 *FR* 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 *FR* 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action does not include environmental justice related issues that require consideration under Executive Order 12898 (59 *FR* 7629, February 16, 1994).

Under RCRA 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 *FR* 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 *FR* 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1994 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States, prior to publication of this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 23, 2002.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 02–19226 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011109274–1301–02; I.D. 072202B]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustment to the 2002 Scup Winter II Commercial Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scup Winter II commercial quota adjustment for 2002.

SUMMARY: NMFS (NOAA Fisheries) adjusts the 2002 Winter II commercial scup quota. This action complies with a provision of the commercial quota management program established by the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). Scup landings in excess of the quota allocated for the prior year's Winter II quota period (November and December) must be deducted from the Winter II scup quota for the following year. The intent of this action is to continue the rebuilding program described in the FMP's objectives, by taking into account 2001 overages of the scup Winter II quota.

DATES: Effective July 31, 2002, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fisheries Policy Analyst, (978) 281–9279.

SUPPLEMENTARY INFORMATION:

Background

NOAA Fisheries published a final rule in the **Federal Register** on December 26, 2001 (66 FR 66348), announcing specifications and adjustments to the 2002 summer flounder, scup, and black sea bass commercial quotas. On February 14, 2002, NOAA Fisheries published a final rule in the **Federal Register** (67 FR 6877) revising the method by which the commercial quotas for these species are to be adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). The FMP originally required that any landings in excess of a commercial quota allocation for a state or period in one year would be deducted from that state's or period's annual quota allocation for the following year. This was problematic because complete landings data for the year were often not available until much later in the next fishing year. As a result, it was frequently necessary for NMFS to publish several subsequent quota adjustments during the next fishing year, as landings information became available. These adjustments complicated the resource management efforts of state marine fisheries agencies, and hampered planning by commercial fishers. The regulatory amendment corrected these deficiencies by establishing a cut-off date of October 31 for landings data to be used in calculating quota overages and making the resultant adjustments to the quotas when developing the specifications for the upcoming fishing year. The regulatory amendment also specified that, by June 30 of the following year, all available landings data for the previous year's Winter II scup quota period (November - December) and the Quarter 4 black sea bass quota period (October - December) would be compiled and compared to the quota allocations for those periods. Any resultant overages would be deducted from the quotas for the current fishing year in July, through notification in the **Federal Register**. Any further overages identified as a result of late data submitted for any given year's quota periods would be applied to the quota allocations for the next fishing year. Accordingly, this notice is being published to inform the public of overages of the 2001 Winter II scup quota period and to adjust the 2002 Winter II scup quota to account for those overages. There was not an overage of the 2001 Quarter 4 black sea bass quota so an adjustment of the 2002 Quarter 4 quota is not necessary.

The adjustment in this notification is final. Additional data, including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers, that are received will be added onto available 2002 landings and then used to determine any adjustments to the 2003 quotas during the specification-setting process for the 2003 fishing year.

Scup

The 2001 Winter II scup quota, available 2001 Winter II scup landings, and the resulting overage of the 2001 Winter II scup quota are presented in Table 1. The resulting adjusted 2002 Winter II scup commercial quota is presented in Table 2.

TABLE 1. SCUP WINTER II 2001 LANDINGS AND OVERAGE

Period	2001 Quota		2001 Landings		2001 Overage	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
Winter II	708,469	321,356	777,790	352,800	69,321	31,444

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

TABLE 2. SCUP WINTER II ADJUSTED 2002 QUOTA

Period	2002 Initial Quota		2002 Adjusted Quota	
	Lb	Kg[1]	Lb	Kg[1]
Winter II	1,248,823	566,456	1,179,502	535,013

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19363 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 67, No. 147

Wednesday, July 31, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN No. 3150–AH03

Cost Recovery for Contested Hearings Involving U.S. National Security Initiatives

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to allow the agency to recover its costs associated with contested hearings involving U. S. Government national security-related proceedings through licensing or other regulatory service fees assessed to the affected applicant or licensee. This proposed amendment would be a special exception to the Commission's longstanding policy of not charging this type of fee for contested hearings and instead recovering the costs through the annual fees assessed to licensees within the affected class.

DATES: The comment period expires August 30, 2002. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1678). Comments may be faxed to (301) 415–1101.

Comments may also be submitted via the NRC's interactive rulemaking Website (http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your Web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov.*

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301–415–8165, or Glenda Jackson, telephone 301–415–6057, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC has a longstanding policy of charging the affected applicant part 170 fees to recover the agency's costs for any uncontested hearings that the NRC holds on applications to construct a power reactor or enrichment facility. These hearings are mandated by statute. However, the NRC's costs for all contested hearings [1] have been recovered through part 171 annual fees assessed to the members of the particular class of licensee to which the applicant belongs.

The NRC published the final rule establishing the part 170 and part 171 fees for FY 2002 on June 24, 2002 (67 FR 42612). The NRC had received a comment on the proposed rule from a nuclear industry group concerning the assessment of annual fees to the fuel facility class of licensees for recovery of the costs involving a contested hearing related to the application for a mixed oxide (MOX) fuel fabrication facility. The industry group commented that assessing the MOX contested hearing costs to the fuel facility fee class was unfair, and that it was a violation of the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, to charge licensees for an agency activity or program from which the licensees receive no benefit. The commenter asserted that fuel facility licensees should not be responsible for bearing the costs of contested hearings associated with MOX fabrication because this process has no relation to the NRC's regulatory services from which fuel facility licensees obtain a benefit.[2] The commenter added that the beneficiaries of the MOX program are the Federal government and the Nation's citizenry because it will aid in the reduction of weapons-grade plutonium. The commenter contended that commercial fuel facility licensees should not have to subsidize the Federal government's efforts to ensure national security, and that such costs should be appropriated through the General Fund and removed from the NRC fee base.

The NRC responded that it must recover its hearing costs through either part 170 fees for services or through part 171 annual fees in order to recover most of its budgeted costs (less the amounts appropriated from the Nuclear Waste Fund) through fees as required by OBRA–90, as amended. The Commission's longstanding policy of recovering contested hearing costs through part 171 annual fees assessed to the affected class of licensee has been confirmed repeatedly in the course of many past fee rulemakings, in court pleadings, and in an NRC report to Congress on fees.

In this case, however, the Commission has stated in the FY 2002 final fee rule that there is merit in the commenter's concern about the assessment of annual fees targeted to the fuel facility class for

[1] A contested proceeding is defined in 10 CFR 2.4 as (1) a proceeding in which there is a controversy between the staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

[2] The MOX program is a Federal government initiative to ensure national security through the disposition of plutonium from dismantled nuclear weapons.

the MOX contested hearing costs, because the NRC licensing action that is the subject of the hearing involves a U.S. Government national security initiative to dispose of plutonium stockpiles. Accordingly, the FY 2002 final fee rule provided that FY 2002 budgeted costs for the MOX contested hearing be recovered through part 171 annual fees assessed to all classes of licensees. The final rule also stated that it was the Commission's intent to issue a proposed rule for public comment that would, beginning in FY 2003, recover the costs for contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee.

Accordingly, the NRC is seeking public comment on its proposal to recover the agency's costs for contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC, through part 170 fees assessed to the affected applicant or licensee. This proposed change would be a special exception to the Commission's policy of not recovering contested hearing costs through part 170 fees assessed to the affected applicant or licensee. The proposed change would only apply to contested hearings on licensing actions directly associated with U.S. Government national security initiatives, such as Presidentially directed national security programs. The affected applicant or licensee would be responsible for the payment of the part 170 fees assessed for these types of contested hearings under the proposed approach. However, because part 170 fees would only be assessed for contested hearings on licensing actions directly involving U.S. Government national security initiatives, the Commission expects that generally the costs would ultimately be borne by the Federal government, rather than the applicant.

In addition to the contested hearing on the MOX fuel fabrication facility application, any potential contested hearing on the TVA license amendments to produce tritium at the Watts Bar and Sequoyah reactors for the Nation's nuclear weapons program would be another example of a contested hearing on a licensing action directly involving a U.S. Government national security initiative for which part 170 fees would be assessed under this proposed rule. Examples of contested hearings on licensing actions that do not involve a U.S. Government national security initiative include the contested hearing on the application for a uranium recovery license filed by Hydro Resources Inc., and the contested hearing on the independent spent fuel storage installation application filed by Private Fuel Storage L.L.C. Furthermore, the proposed rule would leave intact the existing policy of not assessing part 170 fees for contested hearings associated with applications or licenses that are used to provide routine services to U.S. Government agencies.

It should be noted that the Independent Offices Appropriation Act (IOAA) prohibits the NRC from assessing part 170 fees to Federal agencies, except in limited circumstances, such as licensing and inspection of TVA power reactors. Therefore, the proposed change would not apply to most contested hearings on licensing actions involving U.S. Government national security initiatives where a Federal agency is the applicant or licensee.

In the future, the Commission plans to consider a similar approach for recovering NRC's costs for other activities involving U.S. Government national security-related programs, such as allegations and 10 CFR 2.206 petitions, through part 170 fees assessed to the applicant or licensee.

II. Proposed Action

The NRC is proposing to amend 10 CFR part 170 to establish a provision for assessing part 170 fees to the affected applicant or licensee to recover the NRC's full costs of contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC. To implement this special exception to the Commission's longstanding policy of not assessing part 170 fees for contested hearing costs, the NRC is proposing to add a fee exemption to § 170.11 for contested hearings, and to specifically exclude contested hearings on licensing actions directly related to U.S. Government national security initiatives, as determined by the NRC, from the fee exemption. The NRC is proposing to revise the definition of *Special Projects* to include contested hearings on licensing actions related to U.S. Government national security initiatives, and to make corresponding changes to the section related to the payment of special project fees and to fee category J. of § 170.21 and fee category 12. of § 170.31. Only those contested hearings on licensing actions directly associated with a U.S. Government national security initiative, such as those specifically related to Presidentially directed national security programs, would be subject to cost recovery under part 170. The NRC would continue to recover its costs for those contested hearings that are exempted from part 170 fees through part 171 annual fees assessed to the particular class of licensees.

The final rule will not be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC anticipates that the final rule would become effective 30 days after publication in the **Federal Register**. It is the agency's intent to publish the final rule no later than the first quarter of FY 2003.

As a matter of courtesy, the NRC is mailing this proposed rule to all licensees. The NRC will not routinely mail the final rule to all licensees; however the final rule will be mailed to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at *fees@nrc.gov.* In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is amending part 170 to recover costs from applicants or licensees in contested hearings involving Commission-specified U.S. Government national security-related initiatives. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the *U.S. Court of Appeals for the Fifth Circuit in Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980).

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would impose a fee on a very limited number of applicants or licensees to recover the costs of contested hearings involving Commission-specified U.S. Government national security-related initiatives, and it is unlikely that these few organizations would fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

IX. Backfit Analysis

The NRC has determined that its backfit rules do not apply to this proposed rule and therefore, that a backfit analysis is not required for this proposed rule, because these proposed amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter 1.

List of Subjects in 10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 170.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special Projects* to read as follows:

§ 170.3 Definitions.

* * * * *

Special projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter and contested hearings on licensing actions directly related to U.S. Government national security initiatives, as determined by the NRC. Examples of special projects include, but are not limited to, contested hearings on licensing actions directly related to Presidentially directed national security programs, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports.

* * * * *

3. In § 170.11, paragraph (a)(2) is added to read as follows:

§ 170.11 Exemptions.

(a) * * *

(2) A contested hearing conducted by the NRC on a specific application or the authorizations and conditions of a specific NRC license, certificate, or other authorization. This exemption does not apply to a contested hearing on a licensing action that the NRC determines directly involves a U.S. Government national security-related initiative, including those specifically associated with Presidentially directed national security programs.

* * * * *

4. In § 170.12, paragraph (d) is revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(d) *Special Project Fees.* (1) Fees for special projects are based on the full cost of the review or contested hearing. Special projects include activities such as —

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports;

(v) 10 CFR 50.71 final safety analysis reports; and

(vi) Contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review or contested hearing is completed. Each bill will identify the documents submitted for review or the specific contested hearing and the costs related to each. The fees are payable upon notification by the Commission.

* * * * *

5. In § 170.21, the introductory text is presented for the convenience of the user and Category J is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1],[2]
* * * * * *	*
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
* * * * * *	*

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. In § 170.31, the introductory text is presented for the convenience of the user and Category 12 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2,3]
* * * * * *	*
12. Special projects:	
Approvals and preapplication/licensing activities.	Full Cost.
Inspections	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
* * * * * *	*

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

Dated at Rockville, Maryland, this 24th day of July, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 02–19198 Filed 7–30–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–14–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. This proposed AD would require you to repetitively inspect the horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage). If damage is found, this proposed AD would also require you to repair or replace the damaged parts. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and correct damage on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to fluttering and subsequent structural failure of the empennage.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 30, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–14–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–14–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes. The CAA reports that, during regular scheduled maintenance, an operator discovered fretting corrosion on the horizontal and vertical stabilizer attachment bolts on an in service Jetstream Series 4100 airplane. The Jetstream Series 4100 airplane has a similar structural layout in the affected area to those affected by this proposed action. The corrosion is occurring on the eye bolt shanks and the horizontal and vertical stabilizer forward and rear attachment fitting lugs on the contact faces. There have been 10 reported cases of corrosion found on Jetstream Series 3101 and Jetstream Model 3201 airplanes.

What Are the Consequences If the Condition Is Not Corrected?

This condition, if not detected and corrected, could result in failure of the horizontal and vertical stabilizer attachment fittings. Such failure could lead to fluttering and subsequent structural failure of the empennage.

Is There Service Information That Applies to This Subject?

British Aerospace has issued Jetstream Service Bulletin 55–JA010941, Original issue: January 25, 2002.

What Are the Provisions of This Service Information?

The service bulletin includes procedures for:

—Repetitively inspecting the forward and rear horizontal and vertical stabilizer attachment fittings and associated hardware for corrosion and wear (damage); and
—Replacing or repairing any damaged parts found during any inspection.

What Action Did the CAA Take?

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

Was This in Accordance With the Bilateral Airworthiness Agreement?

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other British Aerospace Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes of the same type design that are on the U.S. registry;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 250 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
40 workhours × $60 = $2,400	No parts required to perform the inspection	$2,400	$2,400 × 250 = $600,000.

The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

The FAA has no method of determining the number of repairs each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage would vary on each airplane.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is ''upon accumulating 8 calendar years on the airframe or within the next 6 months after the effective date of this AD, whichever occurs later.''

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

The unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours time-in-service (TIS). This will allow the owners/operators to work the proposed inspection into regularly scheduled maintenance.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 2002–CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct corrosion and/or wear on the horizontal and vertical stabilizer attachment fittings and associated hardware, which could result in failure of the attachment fittings. Such failure could lead to fluttering and subsequent structural failure of the empennage.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Visually inspect the forward and rear horizontal stabilizer attachment bolts and associated hardware for corrosion (i.e., pitting or a change of color in the surface) and wear (damage)	Initially inspect upon accumulating 8 years on the airframe or within the next 6 calendar months after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years	In accordance with British Aerospace Jetstream Service Bulletin 55–JA010941, Original Issue: January 25, 2002.
(2) If corrosion or wear is found during any inspection required in paragraph (d)(1) of this AD, replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin.	Prior to further flight after the inspection in which the damage was found	In accordance with British Aerospace Jetstream Service Bulletin 55–JA010941, Original Issue: January 25, 2002.
(3) Visually inspect the forward and rear horizontal and vertical stabilizer attachment fittings and the forward eye bolts of the vertical stabilizer for corrosion or damage at the lug faces.	Initially inspect upon accumulating 8 years on the airframe or within the next 6 calendar months after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at intervals not to exceed 8 years	In accordance with British Aerospace Jetstream Service Bulletin 55–JA010941, Original Issue: January 25, 2002.
(4) If corrosion or damage is found during any inspection required in paragraph (d)(3) of this AD: (i) replace or repair any damaged part in accordance with the procedures specified in the manufacturer's service bulletin; or (ii) if damage exceeds the limits defined in the manufacturer's service bulletin, obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; and (iii) incorporate this repair scheme	Prior to further flight after the inspection in which the damage was found	Repair in accordance the scheme obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.

Note 1: Although not required by this AD, FAA highly recommends you accomplish Section 2, Part B, *Highly Recommended Corrosion Prevention Tasks*, of the manufacturer's service bulletin.

(e) *Can I comply with this AD in any other way*? You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance*? Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD*? The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD*? You may get copies of the documents referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Service Bulletin 55–JA010941, Original Issue: January 25, 2002. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on July 23, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–19255 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–12261; Notice No. 02–09]

RIN 2120–AH68

Reduced Vertical Separation Minimum in Domestic United States Airspace; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking, published in the **Federal Register** on May 10, 2002 (67 FR 31920). That document proposed to permit Reduced Vertical Separation Minimum (RVSM) flights in the airspace over the contiguous 48 States of the United States and Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services. The RVSM program would allow the use of reduced vertical separation between aircraft at certain altitudes.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, (202) 267–3734.

Correction of Publication

In the notice FR Doc. 02–11704, beginning on page 31920 in the **Federal Register** issue of May 10, 2002, make the following correction:

1. On page 31920, in column 1, in the heading section, beginning on line 6, correct ''RIN 2120–AH63'' to read ''RIN 2120–AH68''.

Issued in Washington, DC on July 25, 2002.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 02–19365 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

17 CFR Part 420

RIN 1505–AA88

Government Securities Act Regulations: Large Position Rules

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (''Treasury,'' ''We,'' or ''Us'') is publishing for comment proposed amendments to the reporting requirements pertaining to very large positions in certain Treasury securities. The regulations are issued under the Government Securities Act Amendments of 1993 (''GSAA''). The purpose of the rules is to provide Treasury with information to better understand the causes of market shortages in certain Treasury securities. We are proposing changes to improve the information available to Treasury. Specifically, we are proposing to modify the report to require separate reporting of certain components of the ''net trading position'' and the ''gross financing position.'' We are also proposing to revise the current ''memorandum'' item to require that the par amount of securities delivered through repurchase agreements be separated by maturity classification. In addition, we are proposing to add a new memorandum item to the large position report that would report the gross par amount of ''fails to deliver.'' Finally, we are proposing to modify the definition of ''gross financing position'' to eliminate the optional exclusion in the calculation of the amount of securities received through certain financing transactions.

DATES: Submit comments on or before September 16, 2002.

ADDRESSES: You may send hard copy comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street N.W., Room 315, Washington, D.C. 20239–0001. You may also send us comments by e-mail at *govsecreg@bpd.treas.gov.* When sending comments by e-mail, please use an ASCII file format and provide your full name and mailing address. You may download this proposed rule, and review the comments we receive, from the Bureau of the Public Debt's website at *www.publicdebt.treas.gov.* The proposed rule and comments will also be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Lee Grandy (Associate Director), or Nadir Isfahani (Government Securities Advisor), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 691–3632 or e-mail us at *govsecreg@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: Treasury published final rules [1] in 1996 that established Part 420 providing recordkeeping and reporting requirements related to very large positions in certain Treasury securities.[2] We are re-examining the ''large position rules'' and proposing modifications to improve the information available to better understand the causes of market shortages in certain Treasury securities. In this notice, we first provide background on the rules and then describe the proposed changes.

---

[1] 61 FR 48338 (September 12, 1996).

[2] 17 CFR Part 420.

I. Background

A. Statutory Authority

In response to short squeezes in two-year Treasury notes that occurred in the government securities market in 1990–1991, Congress included in the GSAA [3] a provision granting Treasury new authority to prescribe rules requiring any person or entity holding, maintaining, or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and, when requested by Treasury, to file reports of such large positions. The provision was intended to improve the information available to Treasury, the Federal Reserve Bank of New York (as Treasury's agent), and the Securities and Exchange Commission (referred to as ''regulators'' in this notice) regarding very large positions in Treasury securities held by market participants and to ensure that regulators have the tools necessary to understand unusual conditions in the Treasury securities market.

B. Reporting and Recordkeeping Requirements

1. On-Demand Reporting System

The rules provide for an ''on-demand'' reporting system rather than a regular, ongoing system of reporting.[4] This approach achieves the intent described above, satisfies the requirement that the rules take into account any impact on the efficiency and liquidity of the Treasury securities market and the cost to taxpayers of funding the federal debt,[5] and also minimizes the costs and burdens to those entities affected by the rules.

2. Notice Requesting Large Position Reports

Large position reports must be filed with the Federal Reserve Bank of New York (''FRBNY'') in response to a notice from us requesting large position information on a specific issue of a Treasury security by entities with positions that equal or exceed the reporting threshold specified in the notice (currently not less than $2 billion).[6] The reports must be received by the FRBNY before noon Eastern time on the fourth business day after the issuance of the Treasury press release calling for large position information.

3. Components of a Position

A ''reportable position'' is the sum of the net trading position, the gross financing position and the net fails position in a specified issue of a Treasury security collectively controlled by a reporting entity.[7] Specific components of these positions are identified at § 420.2. All positions are required to be reported at par value on a trade date basis.

4. Recordkeeping

The recordkeeping requirements provide that any person or entity controlling at least a $2 billion position in a specific Treasury security must maintain and preserve certain records that enable the entity to compile, aggregate and report large position information.[8]

C. Who Is Subject to the Rules

Treasury's large position recordkeeping and reporting rules apply to all persons and entities, foreign and domestic, that control a reportable position in a Treasury security, such as: government securities brokers and dealers; registered investment companies; registered investment advisers; custodians, including depository institutions, that exercise investment discretion; hedge funds; pension funds; insurance companies; and foreign affiliates of U.S. entities. The broad application of the rule to include both foreign and domestic entities is consistent with the statutory purpose of the GSAA.[9]

The rules provide a total exemption for foreign central banks, foreign governments and international monetary authorities (e.g., the World Bank) (collectively, foreign official organizations).[10] This exemption is consistent with the position expressed by the Senate and House during consideration of the legislation.[11] Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account.

Consistent with our policy view as expressed when the rules were adopted, we would like to reiterate that large positions are not inherently harmful, and that there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because its position is large enough to be subject to Treasury's rules.

D. Test Calls

Since the rules became effective in 1997, we have conducted annual calls for reports to test the accuracy and reliability of large position reporting systems. These tests have given us valuable experience and insight as we consider how to improve the information provided to regulators. This experience, in addition to our ongoing need to take into account the liquidity and efficiency of the Treasury securities market, has caused us to re-examine the rules and propose certain modifications. The proposed changes reflect our continuing need for the ability to obtain useful information, while minimizing the costs and burdens on market participants. We believe these changes are consistent with the findings of Congress that (among other things) ''(1) the liquid and efficient operation of the government securities market is essential to facilitate government borrowing at the lowest possible cost to taxpayers; and (2) the fair and honest treatment of investors will strengthen the integrity and liquidity of the government securities market.'' [12]

II. Analysis

A. Changes to the Large Position Calculation and Report

We are proposing changes to:

1. Section 420.3(c)(1) and (c)(3), and Appendix B, to require each of the five components in § 420.2(f)(1)–(5) that, together, comprise the ''net trading position,'' to be reported separately. Since entities already are collecting this information to calculate their total net trading position, we believe that the separation of these components should not prove to be burdensome.

2. Section 420.3(c)(1) and (c)(3), and Appendix B to revise the reporting of the ''gross financing position'' to require entities to separate the reverse repurchase agreement components by maturity classification (i.e., break out reverse repurchase agreements as either ''overnight and open'' or ''term''). Similarly, we are proposing to revise the current memorandum item to require that the total gross par amounts of securities delivered through repurchase agreements be reported by maturity classification. The separate reporting of these individual components in the

[3] Pub. L. 103–202, 107 Stat. 2344 (1993) [15 U.S.C. 78*o*–5(f)].

[4] The rules were issued on September 12, 1996, and were effective on March 31, 1997. They established a new Part 420 of the regulation issued by Treasury in 17 CFR, Chapter IV, Subchapter A.

[5] See *supra* note 3.

[6] The notice is in the form of a press release we issue and subsequently publish in the **Federal Register**. We also provide the press release to major news and financial publications and wire services for dissemination. An electronic mailing list is also available at www.publicdebt.treas.gov.

[7] 17 CFR 420.2(h).

[8] 17 CFR 420.4.

[9] H.R. Rep. 103–255, September 23, 1993.

[10] This exemption does not extend to an entity that engages primarily in commercial transactions and that is owned in whole or in part by a foreign official organization. See 17 CFR 420.1(b).

[11] 139 Cong. Rec. H–10967 (daily ed. November 22, 1993) Statement of Chairman Dingell on S. 422.

[12] See *supra* note 3.

large position formula, as well as the separation of reverse repurchase agreements and repurchase agreements by maturity classification, would help us to better understand the reporting entity's degree of control and economic interest in the particular security. The separate reporting of components would not affect whether a reporting entity ultimately has to file a report in response to a particular call since it would result in the same total reportable position as under the current formula.

3. Section 420.3(c)(2) and Appendix B to add a second memorandum item to the large position information for the gross par amount of ''fails to deliver.'' This would help us to better understand a reporting entity's fails situation without increasing the burden on reporting entities since fails to deliver are already factored into the ''net fails position'' component.

Although no changes are being proposed to the recordkeeping requirements at § 420.4, reporting entities are reminded that they will need to ensure that they maintain records of all of the items that may be reported.

B. Voluntary Optional Exclusion

Finally, we are proposing to amend the definition of ''gross financing position'' at § 420.2(c) to eliminate the optional exclusion for certain securities received through financing transactions. A conforming change would also be made to item #2 ''Gross Financing Position'' in Appendix B to Part 420 (Sample Large Position Report) to reflect the elimination of the optional exclusion.

The current rules allow a reporting entity to elect to reduce its gross financing position by the par amount of the securities received in transactions: In which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody agreements. Our proposed change would eliminate the exclusion in its entirety. We believe this change could enhance the usefulness of the large position reports to regulators. In the preamble to the initial proposed large position regulations,[13] we stated that the rules provided the optional exclusion because of a presumption that the ''receiving organization'' does not have effective control of the securities received in these particular transactions. We now believe that this information could facilitate a better understanding of the causes of a market shortage of a particular security, and that the benefits of including this information are likely to outweigh any potential burden to market participants. Also, it would ensure consistent treatment of overnight reverse repurchase transactions and term reverse repurchase agreements where the counterparty has a right of substitution. We specifically invite comments from market participants concerning any potential obstacles, burdens or other factors related to this proposed change.

In re-examining the current voluntary optional exclusion, we are particularly concerned that in certain situations a market participant might be relying on the ''right to substitute'' provision of the optional exclusion in cases where the counterparty may not have a remaining, immediate, exercisable, explicitly documented right to substitute securities with respect to the particular transaction. For example, if a counterparty's right to substitute securities could not be exercised until 10 days after the ''as of'' large position reporting date, then at the time of the large position report such a right of substitution does not meaningfully limit the control over the securities in question by the party that has received them. Therefore, it may not be appropriate for the rules to permit that party to elect the voluntary exclusion when filing its large position report. Commenters are specifically invited to address whether contract terms such as the ''right to substitute securities,'' or tri-party relationships or hold-in-custody agreements should still be given special consideration. Would clarification of the ''right to substitute'' provision of the optional exclusion, while retaining the exclusion for securities that are subject to tri-party relationships or hold-in-custody agreements, be an alternative that should be given further consideration? Commenters are also invited to address a third alternative, which is to retain the optional exclusion only for reverse repurchase agreements held in tri-party or hold-in-custody arrangements.

We welcome comments on all of these proposed changes, in particular: (1) Whether the changes would accomplish the goal of providing Treasury with more useful information regarding concentrations of control; (2) the effect, if any, the proposed changes would have on market participants; and (3) whether, based on the proposed changes, the current three and a half day reporting timeframe would be sufficient to allow reporting entities to complete the revised large position report.

III. Special Analysis

The proposed amendments reflect Treasury's continuing interest in meeting regulators' informational needs while minimizing the costs and burdens on market participants. The proposed amendments retain the on-demand reporting system, adopted in 1996, which costs market participants less than a regular reporting system would. Based on the very limited impact of the proposed amendments, it is our view that the proposed regulations are not a ''significant regulatory action'' for the purposes of Executive Order 12866.

In addition, we certify under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that the proposed amendments to the current regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. We continue to believe that small entities will not control positions of $2 billion or greater in any particular Treasury security. The inapplicability of the proposed amendments to small entities indicates there is no significant impact. As a result, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act of 1995 requires that collections of information prescribed in the proposed amendments be submitted to the Office of Management and Budget for review and approval.[14] In accordance with that requirement, the Department has submitted the collection of information contained in this notice of proposed rulemaking for review. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C., 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address specified at the beginning of this document.

The collection of information in the proposed amendments is contained in proposed § 420.3. The rules at § 420.3 continue to require a reporting entity whose position equals or exceeds the announced large position threshold for a specific issue of a Treasury security to report the information to FRBNY. Although we cannot be certain of the number of market participants that would be required to report their positions as a result of a call for such

[13] 60 FR 65219 (December 18, 1995).

[14] 44 U.S.C. 3507(d).

reports, we believe few reporting entities would actually have to file reports because the minimum reporting threshold ($2 billion) remains high. In fact, the actual reporting threshold in a specific call for large position reports may exceed $2 billion. Moreover, we expect that our requests for information will be infrequent. We plan to continue testing the reporting and recordkeeping systems of market participants by requesting large position reports at least annually. The threshold limit will be determined based on market conditions at the time of the call.

We do not believe that market participants would find the additional ''fails to deliver'' memorandum item burdensome since they already determine this figure when calculating their ''net fails position'' on line 3 of the existing large position report. The proposed ''fails to deliver'' memorandum item would simply be a place for reporting entities to record a previously derived number.

We also do not anticipate that the proposed elimination of the voluntary optional exclusion within the ''gross financing position'' would be a significant inconvenience for market participants. It is unlikely that removing this exclusion from the large position calculation would increase the time burden that entities face when calculating their positions, although it might result in more entities filing large position reports. We are not certain how many potential respondents rely on this exclusion, and to what extent, however, this number would still be a subset of the small number of entities with positions large enough to be subject to the rules. We invite comments from market participants on the effect of this proposed change, including any operational or system modifications that may be needed.

We believe the separate reporting of the ''net trading position'' components would not be very burdensome for market participants since they must already collect this information to calculate their net trading position. We also believe market participants would not find it very burdensome to separate their reporting of reverse repurchase agreements and repurchase agreements by maturity classification. Since the changes that are proposed would require more detailed information to be provided by reporting entities that file reports in response to a call for reports by Treasury, we are increasing the annual reporting burden in our submission to OMB by 40 hours, representing an increase from four to eight hours per large position report submitter.

The collection of information is intended to enable the Treasury and other regulators to better understand the possible causes of market shortages in certain Treasury securities. This information would help ensure that the Treasury securities market remains liquid and efficient.

Treasury invites further comments on: (1) Whether the proposed collection of information is necessary for the proper performance of functions of the Treasury, including whether the information has practical utility; (2) the accuracy of the Treasury's estimate of the burden; (3) enhancement of the quality, utility, and clarity of information to be collected; and (4) minimizing the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Estimated total annual reporting burden: 40 hours.

Estimated annual number of respondents: 10.

Estimated annual frequency of response: On occasion.

List of Subjects in 17 CFR Part 420

Foreign investments in U.S., Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 17 CFR Part 420 is proposed to be amended as follows:

PART 420—LARGE POSITION REPORTING

1. The authority citation for Part 420 continues to read as follows:

Authority: 15 U.S.C. 78*o*–5(f).

2. Section 420.2 is amended by revising paragraph (c) to read as follows:

§ 420.2 Definitions.

* * * * *

(c) ''Gross financing position'' is the sum of the gross par amounts of a security issue received from financing transactions, including reverse repurchase agreement transactions, bonds borrowed, and as collateral for financial derivatives and other securities transactions (e.g., margin loans). In calculating the gross financing position, a reporting entity may not net its positions against repurchase agreement transactions, securities loaned, or securities pledged as collateral for financial derivatives and other securities transactions.

* * * * *

3. Section 420.3 is amended by revising paragraphs (c)(1), (c)(2) and (c)(3) to read as follows:

§ 420.3 Reporting.

* * * * *

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position in the order specified, as follows:

(i) Net trading position, and each of the following items that together comprise the net trading position:

(A) Cash/immediate net settled positions,

(B) Net when-issued positions for to-be-issued and reopened issues,

(C) Net forward settling positions, including next-day settling,

(D) Net positions in futures contracts requiring delivery of the specific security, and

(E) Net holdings of STRIPS principal components of the specific security;

(ii) Gross financing position and each of the following items that comprise the gross financing position:

(A) Securities received through reverse repurchase agreements by maturity classification:

(*1*) Overnight and open, and

(*2*) Term, and

(B) Securities received through bonds borrowed, and as collateral for financial derivatives and other financial transactions.

(iii) Net fails position; and

(iv) Total reportable position.

(2) The large position report must include the following two additional memorandum items:

(i) The total gross par amounts of securities delivered through:

(A) Repurchase agreements by maturity classification:

(*1*) Overnight and open, and

(*2*) Term, and

(B) Securities loaned, and as collateral for financial derivatives and other securities transactions.

(ii) The gross par amount of ''fails to deliver'' in the security. This total must also be included in Net Fails Position, Line 3.

(3) An illustration of a sample report is contained in Appendix B. Each of the net trading position components shall be netted and reported as a positive number (long position), a negative number (short position), which should be shown in parenthesis, or zero (flat position). The total net trading position shall also be reported as the applicable positive or negative number (or zero). Each of the components of the gross financing position shall be reported. The total gross financing position,

which is the sum of the gross financing position components, shall also be reported. The net fails position should be reported as a single entry. If the amount of the net fails position is zero or less, report zero. The total reportable position, which is the sum of the net trading position, gross financing position, and net fails position, must be reported. Each component of Memorandum 1 shall be reported. The total of Memorandum 1, which is the sum of its components, shall also be reported. Memorandum 2, which is the gross par amount of fails to deliver, shall also be reported. All of these positions should be reported in the order specified above. All position amounts should be reported on a trade date basis and at par in millions of dollars.

* * * * *

4. Appendix B to Part 420 Sample Large Position Report, ''Formula for Determining a Reportable Position,'' is revised to read as follows:

Appendix B to Part 420__Sample Large Position Report Formula for Determining a Reportable Position

[$ Amounts in millions at par value as of trade date]

Security Being Reported	______
Date For Which Information is Being Reported	______
1. Net Trading Position:	
Cash/Immediate Net Settled Positions	$______
Net When-Issued Positions for To-Be-Issued and Reopened Issues	$______
Net Forward Settling Positions Including Next-Day Settling	$______
Net Positions in Futures Contracts Requiring Delivery of the Specific Security	$______
Net Holdings of STRIPS Principal Components of the Specific Security	$______
Total Net Trading Position	$______
2. Gross Financing Position:	
Total of securities received through Reverse Repurchase Agreements:	
Overnight and Open	$______
Term	$______
Bonds borrowed, and as collateral for financial derivatives and other financial transactions	$______
Total Gross Financing Position	+$______
3. Net Fails Position	+$______
(Fails to receive less fails to deliver. If equal to or less than zero, report 0.)	
4. Total Reportable Position	=$______
Memorandum 1	
Report the total gross par amounts of securities delivered through Repurchase Agreements:	
Overnight and Open	$______
Term	$______
Securities loaned, and as collateral for financial derivatives and other securities transactions	$______
Total Memorandum 1	$______
Memorandum 2	
Report the gross par amount of fails to deliver. Included in the calculation of line item 3 (Net Fails Position).	$______

Dated: July 24, 2002.

Brian C. Roseboro,

Assistant Secretary for Financial Markets.

[FR Doc. 02–19238 Filed 7–30–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112306–00]

RIN 1545–AY17

Electing Mark to Market for Marketable Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains procedures for certain United States persons holding marketable stock in a passive foreign investment company (PFIC) to elect mark to market treatment for that stock under section 1296 and related provisions of sections 1291 and 1295. These proposed regulations affect United States persons owning marketable stock in a PFIC. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for November 6, 2002, at 10 a.m., must be received by October 16, 2002.

ADDRESSES: Send submissions to: CC: IT&A:RU (REG–112306–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC: IT&A:RU (REG–112306–00), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW. , Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at: *http://www.irs.gov/regs.* The public hearing will be held in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mark Pollard at (202) 622–3850, concerning submissions and the hearing, Ms. Lanita Vandyke (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

Since the enactment of the Tax Reform Act of 1986, United States persons that own PFIC stock have been subject to two alternative tax regimes: the interest charge rules under section 1291 of the Internal Revenue Code (Code) and the qualified electing fund (QEF) rules under section 1293. Congress recognized that the interest charge rules are a substantial source of complexity for PFIC shareholders and that some shareholders would prefer the current inclusion method afforded by the QEF regime, but are unable to obtain the necessary information from the PFIC. *See* H.R. Rep. No. 105–148, at 533 (1997); S. Rep. No. 105–33 at 94 (1997). Accordingly, Congress enacted new section 1296 in the Taxpayer Relief Act of 1997 to provide shareholders with an alternative method to include income currently with respect to their interest in a PFIC by allowing them to elect to mark to market their PFIC stock provided the stock is marketable. In 1998, Congress enacted certain technical corrections to section 1296 and related provisions, including rules to address the overlap between the PFIC and other mark to market provisions in the Code. IRS Restructuring and Reform Act of 1998, section 6011(c).

Proposed § 1.1291–8 (INTL–656–87) had been published on April 1, 1992 (57 FR 11024). This proposed regulation would have provided an election for certain regulated investment companies (RICs) to use a mark to market method for their PFIC stock. Although § 1.1291–8 was originally proposed to be effective prospectively, the IRS subsequently notified taxpayers that the proposed regulations, when finalized, would permit this limited mark to market election to be made only for taxable years ending after March 31, 1992, and before April 1, 1993. Notice 92–53 (1992–2 C.B. 384). As a result of the enactment of section 1296, proposed § 1.1291–8 was withdrawn (64 FR 5015); *see* also Notice 99–14 (1999–11 I.R.B. 7).

On January 25, 2000, final regulations were published under section 1296(e) (2000 final regulations). TD 8867 (65 FR 3817). The 2000 final regulations provide guidance regarding the definition of marketable stock for purposes of section 1296.

In General

United States persons who own marketable stock (as defined in section 1296(e)) in a PFIC may elect to mark to market that stock annually pursuant to section 1296 (section 1296 election). United States persons making a section 1296 election with respect to PFIC stock (section 1296 stock) are not subject to the generally applicable interest charge regime of section 1291. The section 1296 election is available to United States persons and controlled foreign corporations (CFCs) that own, or are treated as owning, marketable stock in a PFIC.

Explanation of Provisions

A. Changes to Proposed § 1.1291–1(c): Coordination of PFIC Rules and Other Mark to Market Provisions

Except for the coordination rules discussed herein, section 1291(d)(1) provides that the interest charge regime does not apply in the case of PFIC stock that is marked to market under (i) section 1296, or (ii) section 475 or any other provision of chapter 1 of the Code. This regulation revises § 1.1291–1(c), 57 FR 11024, proposed April 1, 1992, to incorporate this coordination rule and to clarify that the interest charge regime does not apply to a United States person that marks to market its PFIC stock under any provision of chapter 1 of the Code, without regard to whether such regime is mandatory or elective. Proposed § 1.1295–1(i)(3) and proposed § 1.1296–1(h)(3)(i) further clarify that, with respect to taxation under a mark to market provision other than under section 1296, this coordination rule applies without regard to whether the taxpayer also has made a section 1296 election or a QEF election with respect to such stock, by providing that either election is automatically terminated immediately following the close of the taxpayer's taxable year preceding the first taxable year for which the stock of the PFIC is subject to the mark to market regime under another provision of chapter 1 of the Code.

The proposed regulations also provide a special rule for situations where a taxpayer owns PFIC stock that becomes subject to a mark to market regime other than section 1296 after the first taxable year of the taxpayer's holding period. In such instances, the taxpayer must apply the coordination rules of § 1.1291–1(c)(3)(ii) for the first taxable year that such other mark to market regime applies. Thereafter, the general rule above, overriding the application of the section 1291, QEF and PFIC mark to market regimes, applies for all subsequent taxable years provided that the PFIC stock continues to be marked to market under another provision of chapter 1 of the Code.

B. Changes to § 1.1295–1

1. Revocation of QEF Election

The proposed regulations also provide guidance on the coordination of the mark to market provisions under section 1296 with the existing rules for QEFs. In general, the Service considered the circumstances in which a taxpayer would be permitted to switch from one regime to another in light of the relative administrative burdens imposed under each set of rules, and the stated intent of Congress that one of the purposes for enacting section 1296 was to provide another alternative to the interest charge rules of section 1291 that would be available in instances where taxpayers cannot obtain sufficient information to make a QEF election. See H.R. Rep. No. 105–148, at 533 (1997); S. Rep. No. 105–33 at 94 (1997). Accordingly, the proposed regulations are structured to facilitate an election for mark to market treatment by permitting a taxpayer with an existing QEF election to make a section 1296 election and terminate the existing QEF election without requiring consent of the Commissioner. In instances where a taxpayer has an existing section 1296 election, it is permitted to make a QEF election only if the section 1296 election is terminated as provided by section 1296 and the regulations thereunder (e.g., if the PFIC stock ceases to be marketable) or is revoked with consent of the Commissioner.

2. Re-Election of QEF Regime

The proposed regulations further provide that if the section 1296 election is subsequently terminated or revoked, other than because the taxpayer marks to market under another provision of the Code, (e.g., because the stock is no longer marketable), the shareholder will be subject to tax under section 1291, unless a new QEF election is made. Section 1.1295–1(i)(4) currently provides that without the Commissioner's consent, a shareholder whose QEF election was invalidated, terminated, or revoked may not make a new QEF election with respect to the PFIC before the sixth taxable year ending after the taxable year in which the invalidation, termination, or revocation became effective. The regulations propose to amend § 1.1295–1(i) to provide an exception for situations where a United States person's QEF election was terminated because it elected to mark to market such stock under section 1296, and the 1296 election was subsequently terminated because the stock ceased to be marketable. A similar exception is provided for situations where a United States person's QEF election is terminated because its PFIC stock is marked to market under another provision of chapter 1 of the Code, and such provision subsequently ceases to apply. In either circumstance, consent of the Commissioner will not be required for the United States person to re-elect QEF status prior to the sixth taxable year ending after the taxable year that its QEF election was terminated. In situations where a QEF election is terminated because a United States person makes a section 1296 election, and then this election terminates for some reason other than the stock ceasing to be marketable (e.g., pursuant to the consent of the Commissioner under proposed § 1.1296–1(h)(3)(A)), a taxpayer may request consent under § 1.1295–1(i) to make a new QEF election prior to such sixth taxable year.

Special issues arise in situations where a taxpayer makes a QEF election with respect to stock that was previously marked to market under section 1296 (or where a taxpayer re-elects QEF treatment after a termination of mark-to-market treatment). In such situations, the taxpayer shifts from annual inclusions under the mark to market rules that are based on the amount of unrealized gain (or loss) in the stock of the PFIC, to annual inclusions of a pro rata share of the ordinary earnings and long-term capital gain of a PFIC under the QEF rules. For example, unrealized items that were reflected in annual mark to market inclusions could be taken into account subsequently under the QEF rules when realized. These issues presently are addressed through the respective basis adjustments provided for under the QEF and mark to market rules. See sections 1293(d) and 1296(b). Comments are requested on possible alternative approaches for addressing this situation with a view toward ensuring administrability and avoiding additional complexity.

C. Addition of § 1.1296–1

1. Effect of Election

The proposed regulations provide that, on the last day of a taxable year to which a section 1296 election applies, the United States person recognizes gain to the extent that the fair market value of section 1296 stock exceeds its adjusted basis. Any such gain shall be treated as ordinary income. To the extent that the adjusted basis of section 1296 stock exceeds its fair market value, the United States person may take a deduction equal to the lesser of the amount of such excess or the unreversed inclusions with respect to such stock. Any such deduction will be treated as an ordinary loss.

Under former proposed § 1.1291–8, certain RICs were permitted to mark to market PFIC stock. For RICs that elect to mark to market their PFIC stock under section 1296, the unreversed inclusions include amounts that were included in gross income under former proposed § 1.1291–8 with respect to that stock for prior taxable years. See Notice 92–53 (1992–2 C.B. 384).

The proposed regulations also address the application of section 1296 in taxable years in which the foreign corporation has ceased to be a PFIC under section 1297(a), and is not treated as a PFIC under section 1298(b)(1) (the once a PFIC, always a PFIC rule). The proposed regulations clarify that there will be no mark to market inclusions or deductions for taxable years in which the foreign corporation is not a PFIC. The suspension of mark to market treatment while the foreign corporation is not a PFIC is consistent with § 1.1295–1(c)(2)(ii), which provides that a shareholder that has made a QEF election with respect to stock of a foreign corporation is not required to include its pro rata share of ordinary income and capital gains under section 1293 for years in which the foreign corporation is not a PFIC.

In order to accomplish this suspension of mark to market treatment, the proposed regulations start a new holding period, for all purposes of the PFIC rules, in stock that is marked to market under section 1296 beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 applied. Accordingly, prior periods during which the foreign corporation was a PFIC, but for which the shareholder had a section 1296 election in effect, are not included in such shareholder's holding period for purposes of applying section 1298(b)(1).

Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1296 election (although a shareholder may request consent of the Commissioner to revoke the election in such instance, as discussed below). Thus, if the foreign corporation once again becomes a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original section 1296 election continues to apply and the shareholder must mark to market the PFIC stock for such year.

2. Adjustment to Basis

The proposed regulations provide that a United States person will increase the adjusted basis of its section 1296 stock by the amount of mark to market gain recognized. Conversely, if the United States person is entitled to a deduction under this section, the adjusted basis of its section 1296 stock is decreased by the amount of such deduction.

If a United States person owns section 1296 stock through a foreign partnership, foreign trust, or foreign estate, the basis rules apply to both the United States person and the entity or entities through which the United States person is considered to own the stock. The increase or decrease in the adjusted basis of the stock in the hands of the foreign partnership, foreign trust, or foreign estate will be solely attributable to the electing United States person (in a manner similar to an adjustment under section 743(b)), and will apply only for purposes of determining the subsequent U.S. income tax treatment of the United States person with respect to such stock. The IRS considered imposing reporting and record keeping requirements on the foreign entities to track the adjustments to the adjusted basis of any section 1296 stock they held directly or indirectly. The IRS decided not to adopt this approach in the proposed regulations because one of the motivations for the enactment of section 1296 was to provide an alternative tax regime to section 1291 for taxpayers that could not obtain sufficient information from a PFIC to make a QEF election. Comments are requested about other approaches for satisfying the compliance obligations of U.S. persons making a section 1296 election and the intervening entity or entities through which such stock is owned.

The taxpayer and the entity through which the taxpayer owns section 1296 stock may have different taxable years. Consistent with the general approach of sections 706(a), 652(c), and 662(c), a United States person who owns stock in a PFIC through any foreign partnership, foreign trust, or foreign estate determines the mark to market gain or mark to market loss with reference to the last day of the taxable year of the foreign partnership, foreign trust or foreign estate and then includes that gain or loss in the taxable year of such United States person that includes the last day of the taxable year of the entity.

Finally, if PFIC stock is acquired from a decedent by bequest, devise, or inheritance (or by the decedent's estate) and a mark to market election was in effect on the decedent's date of death, the adjusted basis of such stock in the hands of the recipient will be equal to the lesser of the basis determined under section 1014 or the adjusted basis of the stock in the hands of the decedent immediately prior to his or her death.

3. Rule for Individuals That Become Subject to United States Income Taxation

The proposed regulations provide that if any individual becomes a United States person in a taxable year beginning after December 31, 1997, the adjusted basis (before any adjustments resulting from the mark to market election are made) of any stock in a PFIC owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day. This special rule for determining the taxpayer's adjusted basis will apply only for purposes of section 1296 and the regulations thereunder. Accordingly, any gain or loss recognized on the disposition of section 1296 stock that is attributable to the period before the individual became a United States person will be subject to the general rules of the Code, including any limitation on the deductibility of a loss, for example, under section 1211.

4. Indirect Ownership of PFIC Stock

Except as discussed below in the case of eligible RICs, the proposed regulations apply the specific attribution rules of section 1296(g) in determining whether PFIC stock is considered owned by a taxpayer for purposes of section 1296 and, therefore, with respect to which the taxpayer is permitted to make a section 1296 election. Thus, a United States person will be permitted to make a section 1296 election with respect to stock owned through a foreign partnership, foreign trust, or foreign estate. In general, stock owned by or for such entities will be considered as being owned proportionately by its partners or beneficiaries. For purposes of this rule, stock owned, directly or indirectly, by or for a foreign trust described in sections 671 through 679, shall be considered as being owned proportionately by its grantors or other persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock.

The section 1296(g) attribution rules do not attribute ownership through foreign corporations. Accordingly, a United States person will not be permitted to make a section 1296 election with respect to stock owned indirectly through a foreign corporation. However, as discussed below, in instances where the foreign corporation is a CFC, the foreign corporation is permitted to make a section 1296 election directly.

Special attribution rules for eligible RICs are provided in § 1.1296(e)–1(f). There is a different attribution rule for RICs because section 1296(e)(2), which provides a special rule for RICs, states that stock owned, directly or indirectly, by the RIC, without reference to the ownership attribution rules in section 1296(g), shall be treated as marketable stock. This approach is consistent with former proposed § 1.1291–8, which permitted certain RICs to mark to market PFIC stock that it owned directly or indirectly.

An issue not addressed in these proposed regulations is the treatment of certain situations involving multiple tiers of PFICs. For example, assume a United States person owns marketable stock in a PFIC, that itself owns stock in a second PFIC, the ownership of which is attributable to the United States person under section 1298(a)(2). If the United States person makes a section 1296 election with respect to stock of the upper-tier PFIC, the annual mark to market inclusions of income under section 1296 will be based on the fair market value of the upper-tier PFIC stock, whose value should reflect the value of the lower-tier PFIC, as such stock is an asset of the upper-tier PFIC. However, under current law, the United States person continues to be subject to taxation with respect to its indirect ownership of the lower-tier PFIC under section 1291 on any excess distributions from the lower-tier PFIC or gain from an indirect disposition of the lower-tier PFIC stock (although the consequences from the tiered ownership may be ameliorated by adjustments to the basis of the upper-tier PFIC stock). *See* proposed §§ 1.1291–2(f), and 1.1291–3(e). Similar issues arise if the United States person makes a QEF election with respect to the lower-tier PFIC. Comments are requested regarding coordination rules or other adjustments that may be appropriate to address this situation and similar structures involving a United States person that owns stock directly and indirectly in tiers of PFICs.

5. Treatment of CFCs as United States Persons

A CFC that owns PFIC stock is treated as a United States person for purposes of section 1296 and, as noted above, is permitted to make a section 1296 election directly. If a section 1296 election is made with respect to PFIC stock owned by a CFC directly, or treated as owned by a CFC applying the section 1296(g) attribution rules, then any mark to market gains are included in the gross income of the CFC as foreign personal holding company income under section 954(c)(1)(A) and any mark to market losses are treated as deductions allocable to such foreign personal holding company income for purposes of computing net foreign base company income under § 1.954–1(c).

Under the proposed regulations, if a section 1296 election is made for a CFC with respect to its PFIC stock, the PFIC rules do not also apply separately to any United States shareholder, as defined in section 951(b), with respect to its pro rata share of the PFIC stock held by the CFC. Instead, the United States shareholder generally will recognize the mark to market gain as an inclusion of income under section 951(a). Thus, United States shareholders of CFCs are appropriately excluded from the application of section 1291 if a section 1296 election is made by the CFC. This rule, however, does not apply to United States persons who own stock of the CFC but are not United States shareholders within the meaning of section 951(b). Those United States persons continue to be subject to the PFIC provisions with respect to the stock of such foreign corporation, and may avail themselves of a QEF election. This rule is consistent with the CFC/PFIC overlap rule in section 1297(e), which eliminates the application of the PFIC provisions solely for United States shareholders of the entity that is both a PFIC and a CFC. Finally, comments are requested about whether similar rules should apply to United States persons that are United States shareholders of a CFC solely by application of section 953(c)(1)(A).

6. Elections

The proposed regulations provide that a United States person may make a section 1296 election for a taxable year beginning after December 31, 1997, by the due date (including extensions) of the United States person's federal income tax return. The proposed regulations further provide that a section 1296 election of a CFC is made by its controlling United States shareholders by the due date (including extensions) of their federal income tax returns in accordance with the general rules for elections by a CFC under § 1.964–1(c)(5).

The proposed regulations provide that a section 1296 election applies to the year for which made and to each succeeding year unless the election is terminated or revoked. A section 1296 election automatically terminates when (i) the PFIC stock ceases to be marketable, or (ii) when the PFIC stock is marked to market under another provision of chapter 1 of the Code. A section 1296 election also may be revoked with the consent of the Commissioner. Such consent will only be granted, however, upon a showing of a substantial change in circumstances. Similar rules apply in the case of the revocation of a QEF election.

7. Coordination Rules for First Year of Election

Finally, the proposed regulations provide coordination rules that apply to the first taxable year to which section 1296 applies. A United States person (other than a RIC) whose holding period includes a period when the foreign corporation was a PFIC and for which a QEF election had not been made generally will be subject to section 1291 in the year of the election and subject to section 1296 in subsequent years. Special rules also apply to RICs for the first year in which a section 1296 election applies.

D. Changes to § 1.1296(e)–1(b)

As discussed above, a section 1296 election is only available for marketable stock of a PFIC. Section 1296(e) defines marketable stock to include any stock which is regularly traded on certain securities exchanges or other markets. The 2000 final regulations provide guidance regarding the definition of marketable stock for purposes of section 1296. In particular, the 2000 final regulations define regularly traded for these purposes to require that a class of stock be traded on at least 15 days during each calendar quarter for any calendar year. Taxpayers have noted that this rule would exclude stock issued as a result of an initial public offering (IPO) from qualifying as marketable stock for the year of issuance in many instances (e.g., stock issued through a public offering occurring other than during the first quarter of the year). Therefore, these regulations propose modifying the current rule in such instances.

The proposed regulations provide that the stock issued in a public offering will qualify as regularly traded if the stock is traded on one or more qualified exchanges or other markets, other than in de minimis quantities, on 1/6 of the days remaining in the quarter in which the offering occurs, and on at least 15 days during each remaining quarter of the calendar year. If the public offering occurs in the fourth quarter of the calendar year, the stock will qualify as regularly traded if it is traded on such exchanges or markets, other than in de minimis quantities, on the greater of 1/6 of the days remaining in the quarter in which the offering occurs, or 5 days. The proposed regulations also modify the anti-abuse rule in § 1.1296(e)–1(b)(2) to apply to these changes to the definition of regularly traded.

E. Amendment of § 1.6031(a)–1

In general, a foreign partnership that has U.S. source income is required to file a U.S. Federal income tax return pursuant to § 1.6031(a)–1(b)(1). An issue arises whether a filing obligation is created on behalf of a foreign partnership where a U.S. partner of the foreign partnership makes a section 1296 election with respect to the U.S. partner's share of the PFIC stock held by the partnership. The income of the partner arising as a result of the section 1296 election generally will be U.S. source. See sections 1296(c)(2) and 865(a), (i)(5). The proposed regulations resolve this issue by modifying § 1.6031(a)–1(b)(1) such that a foreign partnership will not be required to file a partnership return if the only reason for filing a return, but for this special rule, would be U.S. source income resulting from a direct or indirect partner's section 1296 election.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely (in a manner described in the "ADDRESSES" portion of this preamble) to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing is scheduled for November 6, 2002, beginning at 10:00 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to this hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 16, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of this regulation are Mark Pollard and Laurie Hatten-Boyd, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1296–1 also issued under 26 U.S.C. 1296(g) and 26 U.S.C. 1298(f). * * *

Par. 2. Section 1.1291–1, as proposed on April 1, 1992, at 57 FR 11024, is further proposed to be amended by:

1. Revising the headings to paragraphs (c) and (c)(1).
2. Redesignating the text of paragraphs (c)(1) and (c)(2) as (c)(1)(i) and (c)(1)(ii), respectively.
3. Adding new paragraphs (c)(2) and (c)(3).
4. Revising paragraph (j)(1).
5. Removing paragraph (j)(3).

The revisions and addition read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

* * * * *

(c) *Coordination with other PFIC rules*—(1) *Coordination with QEF rules.* * * *

(2) *Coordination with section 1296: distributions and dispositions.* If PFIC stock is marked to market under section 1296 for any taxable year, then, except as provided in § 1.1296–1(i), section 1291 and the regulations thereunder shall not apply to any distribution with respect to section 1296 stock (as defined in § 1.1296–1(a)(2)), or to any disposition of such stock, for such taxable year.

(3) *Coordination with mark to market rules under chapter 1 of the Internal Revenue Code other than section 1296*—(i) *In general.* If PFIC stock is marked to market for any taxable year under

section 475 or any other provision of chapter 1 of the Internal Revenue Code, other than section 1296, regardless of whether the application of such provision is mandatory or results from an election by the taxpayer or another person, then, except as provided in paragraph (c)(3)(ii) of this section, section 1291 and the regulations thereunder shall not apply to any distribution with respect to such PFIC stock or to any disposition of such PFIC stock for such taxable year. *See* §§ 1.1295–1(i)(3) and 1.1296–1(h)(3)(i) for rules regarding the automatic termination of an existing election under section 1295 or section 1296 when a taxpayer marks to market PFIC stock under section 475 or any other provision of chapter 1 of the Internal Revenue Code.

(ii) *Coordination rule*—(A) Notwithstanding any provision in this section to the contrary, the rule of paragraph (c)(3)(ii)(B) of this section shall apply to the first taxable year in which a United States person marks to market its PFIC stock under a provision of chapter 1 of the Internal Revenue Code, other than section 1296, if such foreign corporation was a PFIC for any taxable year, prior to such first taxable year, during the United States person's holding period (as defined in section 1291(a)(3)(A) and § 1.1296–1(f)) in such stock, and for which such corporation was not treated as a QEF with respect to such United States person.

(B) For the first taxable year of a United States person that marks to market its PFIC stock under any provision of chapter 1 of the Internal Revenue Code, other than section 1296, such United States person shall, in lieu of the rules under which the United States person marks to market, apply the rules of § 1.1296–1(i)(2) and (3) as if the United States person had made an election under section 1296 for such first taxable year.

* * * * *

(j) *Effective date*—(1) *In general.* Except as otherwise provided in this paragraph (j), §§ 1.1291–1 through 1.1291–7 apply on April 11, 1992. Section 1.1291–1(c)(2) and (3) apply as of the date final regulations are published in the **Federal Register**. Shareholders of 1291 funds, in determining their liability under sections 1291 through 1297 beginning after December 31, 1986, and before the effective date of these regulations, must apply reasonable interpretations of the statute and legislative history and employ reasonable methods to apply the interest charge.

* * * * *

Par. 3. Section 1.1295–1 is amended by:

1. Redesignating paragraphs (i)(3) and (i)(4) as paragraphs (i)(4) and (i)(5), respectively.
2. Adding a new paragraph (i)(3).
3. Revising newly designated paragraph (i)(5).
4. Revising paragraph (k).

The revisions and addition read as follows:

§ 1.1295–1 Qualified electing funds

* * * * *

(i) * * *

(3) *Automatic termination.* If a United States person, or the United States shareholder on behalf of a controlled foreign corporation, makes an election pursuant to section 1296 and the regulations thereunder with respect to PFIC stock for which a QEF election is in effect, or marks to market such stock under another provision of chapter 1 of the Internal Revenue Code, the QEF election is automatically terminated with respect to such stock that is marked to market under section 1296 or another provision of Chapter 1 of the Internal Revenue Code. Such termination shall be effective on the last day of the shareholder's taxable year preceding the first taxable year for which the section 1296 election is in effect or such stock is marked to market under another provision of chapter 1 of the Internal Revenue Code.

Example. A, a U.S. corporation, owns directly 100 shares of marketable stock in foreign corporation X, a PFIC. A also owns a 50 percent interest in Y, a foreign partnership that owns 200 shares of X. Accordingly, under section 1298(a)(3) and § 1.1296–1(e)(1), A is treated as indirectly owning 100 shares of X. A also owns 100 percent of the stock of Z, a foreign corporation that is not a PFIC. Z owns 100 shares of X, and therefore under section 1298(a)(2)(A), A is treated as owning the 100 shares of X owned by Z. For taxable year 2003, A has a QEF election in effect with respect to X that applies to all 300 shares of X stock owned directly or indirectly by A. See generally § 1.1295–1(c)(1). For taxable year 2004, A makes a timely election pursuant to section 1296 and the regulations thereunder. For purposes of section 1296, A is treated as owning stock held indirectly through a partnership, but not through a foreign corporation. Section 1296(g); § 1.1296–1(e)(1). Accordingly, A's section 1296 election covers the 100 shares it owns directly and the 100 shares it owns indirectly through Y, but not the 100 shares owned by Z. With respect to the first 200 shares, A's QEF election is automatically terminated effective December 31, 2003. With respect to the 100 shares A owns through foreign corporation Z, A's QEF election remains in effect unless invalidated, terminated, or revoked pursuant to this paragraph (i).

* * * * *

(5) *Effect after invalidation, termination, or revocation*— (i) *In general.* Without the Commissioner's consent, a shareholder whose section 1295 election was invalidated, terminated, or revoked under this paragraph (i) may not make the section 1295 election with respect to the PFIC before the sixth taxable year in which the invalidation, termination, or revocation became effective.

(ii) *Special rule.* Notwithstanding paragraph (i)(5)(i) of this section, a shareholder whose section 1295 election was terminated pursuant to paragraph (i)(3) of this section, and either whose section 1296 election has subsequently been terminated because its PFIC stock ceased to be marketable or who no longer marks to market such stock under another provision of chapter 1 of the Internal Revenue Code, may make a section 1295 election with respect to its PFIC stock before the sixth taxable year in which its prior section 1295 election was terminated.

* * * * *

(k) *Effective dates.* Except as otherwise provided, paragraphs (b)(2)(iii), (b)(3), (b)(4), and (c) through (j) of this section are applicable to taxable years of shareholders beginning after December 31, 1997. However, taxpayers may apply the rules under paragraphs (b)(4), (f) and (g) of this section to a taxable year beginning before January 1, 1998, provided the statute of limitations on the assessment of tax has not expired as of April 27, 1998, and, in the case of paragraph (b)(4) of this section, the taxpayers who filed the joint return have consistently applied the rules of that section to all taxable years following the year the election was made. Paragraph (b)(3)(v) of this section is applicable as of February 7, 2000, however, a taxpayer may apply the rules to a taxable year prior to the applicable date provided the statute of limitations on the assessment of tax for that taxable year has not expired. Paragraphs (i)(3) and (i)(5)(ii) of this section are applicable as of the date final regulations are published in the **Federal Register**.

Par. 4. Section 1.1296–1 is added to read as follows:

§ 1.1296–1 Mark to market election for marketable stock.

(a) *Definitions*—(1) *Eligible RIC.* An eligible RIC is a regulated investment company that offers for sale, or has outstanding, any stock of which it is the issuer and which is redeemable at net asset value, or that publishes net asset valuations at least annually.

(2) *Section 1296 stock.* The term *section 1296 stock* means marketable

stock in a passive foreign investment company (PFIC), including any PFIC stock owned directly or indirectly by an eligible RIC, for which there is a valid section 1296 election. Section 1296 stock does not include stock of a foreign corporation that previously had been a PFIC, and for which a section 1296 election remains in effect.

(3) *Unreversed inclusions*—(i) *General rule.* The term *unreversed inclusions* means with respect to any section 1296 stock, the excess, if any, of—

(A) The amount of mark to market gain included in gross income of the United States person under paragraph (c)(1) of this section with respect to such stock for prior taxable years; over

(B) The amount allowed as a deduction to the United States person under paragraph (c)(3) of this section with respect to such stock for prior taxable years.

(ii) *Section 1291 adjustment.* The amount referred to in paragraph (a)(3)(i)(A) of this section shall include any amount subject to section 1291 under the coordination rule of paragraph (i)(2)(ii) of this section.

(iii) *Example.* An example of the computation of unreversed inclusions is as follows:

Example. A, a United States person, acquired stock in D, a foreign corporation, on January 1, 2003 for $150. At such time and at all times thereafter, D was a PFIC and A's stock in D was marketable. For taxable years 2003 and 2004, D was a nonqualified fund subject to taxation under section 1291. A made a timely section 1296 election with respect to the D stock, effective for tax year 2005. The fair market value of the D stock was $200 as of December 31, 2004, and $240 as of December 31, 2005. Additionally, D made no distribution with respect to its stock for the taxable years at issue. In 2005, pursuant to paragraph (i)(2)(ii) of this section, A must include the $90 gain in the D stock in accordance with the rules of section 1291 for purposes of determining the deferred tax amount and any applicable interest. Nonetheless, for purposes of determining the amount of the unreversed inclusions pursuant to paragraph (a)(3)(ii) of this section, A will include the $90 of gain that was taxed under section 1291 and not the interest thereon.

(iv) *Special rule for regulated investment companies.* In the case of a regulated investment company which had elected to mark to market the PFIC stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company makes a section 1296 election, the amount referred to in paragraph (a)(3)(i)(A) of this section shall include amounts previously included in gross income by the company pursuant to such mark to market election with respect to such stock for prior taxable years. See Notice 92–53 (1992–2 C.B. 384).

(b) *Application of section 1296 election*—(1) *In general.* Any United States person and any controlled foreign corporation (CFC) that owns directly, or is treated as owning under this section, marketable stock, as defined in § 1.1296(e)-1, in a PFIC may make an election to mark to market such stock in accordance with the provisions of section 1296 and this section.

(2) *Election applicable to specific United States person.* A section 1296 election applies only to the United States person (or CFC that is treated as a U.S. person under paragraph (g)(2) of this section) that makes the election. Accordingly, a United States person's section 1296 election will not apply to a transferee of section 1296 stock.

(3) *Election applicable to specific corporation only.* A section 1296 election is made with respect to a single foreign corporation, and thus a separate section 1296 election must be made for each foreign corporation that otherwise meets the requirements of this section. A United States person's section 1296 election with respect to stock in a foreign corporation applies to all marketable stock of the corporation that the person owns directly, or is treated as owning under paragraph (e) of this section, at the time of the election or that is subsequently acquired.

(c) *Effect of election*—(1) *Recognition of gain.* If the fair market value of section 1296 stock on the last day of the United States person's taxable year exceeds its adjusted basis, the United States person shall include in gross income for its taxable year the excess of the fair market value of such stock over its adjusted basis (mark to market gain).

(2) *Character of gain.* (i) Mark to market gain, and any gain on the sale or other disposition of section 1296 stock, shall be treated as ordinary income.

(ii) *Example.* The following example illustrates this paragraph (c)(2):

Example. A, a United States person, purchases stock in C, a foreign corporation that is not a PFIC, in 1990 for $1000. On January 1, 2003, when the fair market value of the C stock is $1,100, foreign corporation C becomes a PFIC. A makes a timely section 1296 election for year 2003. On December 31, 2003, the fair market value of the C stock is $1,200. For taxable year 2003, A includes $200 of mark to market gain (the excess of the fair market value of C stock ($1,200) over A's adjusted basis ($1,000)) in gross income as ordinary income.

(3) *Recognition of loss.* If the adjusted basis of section 1296 stock exceeds its fair market value on the last day of the United States person's taxable year, such person shall be allowed a deduction for such taxable year equal to the lesser of the amount of such excess or the unreversed inclusions with respect to such stock (mark to market loss).

(4) *Character of loss*—(i) *Losses not in excess of unreversed inclusions.* Any mark to market loss allowed as a deduction under paragraph (c)(3) of this section, and any loss on the sale or other disposition of section 1296 stock, to the extent that such loss does not exceed the unreversed inclusions attributable to such stock, shall be treated as an ordinary loss, deductible in computing adjusted gross income.

(ii) *Losses in excess of unreversed inclusions.* (A) Any loss recognized on the sale or other disposition of section 1296 stock in excess of any prior unreversed inclusions will be subject to the rules generally applicable to losses provided elsewhere in the Internal Revenue Code and the regulations thereunder.

(B) The following example illustrates the treatment of losses in excess of unreversed inclusions:

Example. A, a United States person and a calendar year taxpayer, purchased marketable stock in FC, a foreign corporation that was a PFIC, for $1000 on January 31, 2003. A made a section 1296 election with respect to the stock of FC for 2003. At the close of 2003, the fair market value of A's stock in FC was $1,200. Under paragraph (c)(1) and (2) of this section, A included $200 of mark to market gain as ordinary income for 2003, and pursuant to paragraph (d)(1) of this section, increased his basis in the stock by that amount. On June 15, 2004, A sold his stock in FC for $900. At that time, A's unreversed inclusions with respect to the stock in FC were $200. Accordingly, A may deduct the amount equal to his unreversed inclusions, $200, as an ordinary loss. The $100 loss in excess of A's unreversed inclusions will be treated as a long term capital loss because A has held the FC stock for more than one year.

(5) *Application of election to separate lots of stock.* (i) In the case in which a United States person purchased or acquired shares of stock in a PFIC at different prices, the rules of this section shall be applied in a manner consistent with the rules of § 1.1012–1.

(ii) *Example.* The following example illustrates this paragraph (c)(5):

Example. On January 1, 2003, United States corporation A purchased 100 shares (first lot) of stock in foreign corporation X, a PFIC, for $500 ($5 per share). On June 1, 2003, A purchased 100 shares (second lot) of stock in X for $1,000 ($10 per share). A made a timely section 1296 election with respect to its stock in X for taxable year 2003. On December 31, 2003, the fair market value of X stock was $8 per share. For taxable year 2003, A recognizes $300 of gross income under paragraph (c)(1) of this section with respect to the first lot, and adjusts its basis in that lot to $800 pursuant to paragraph (d)(1) of this section. With respect to the second lot, A is not permitted to recognize a loss under paragraph (c)(3) of this section for taxable year 2003. Although A's adjusted basis in that stock exceeds its fair market value by $200, A has no unreversed inclusions with respect to that particular lot of stock. On July 1, 2004, A sells 100 shares of X stock for $900. Assuming that A adequately identifies (in accordance with the rules of § 1.1012–1(c)) the shares of X corporation stock sold as being from the second lot, A recognizes $100 of long term capital loss pursuant to paragraph (c)(4)(ii) of this section.

(6) *Source rules.* The source of any amount included in gross income under paragraph (c)(1) of this section, or the allocation and apportionment of any amount allowed as a deduction under paragraph (c)(3) of this section, shall be determined in the same manner as if such amounts were gain or loss (as the case may be) from the sale of stock in the PFIC.

(d) *Adjustment to basis*—(1) *Stock held directly.* The adjusted basis of the section 1296 stock shall be increased by the amount included in the gross income of the United States person under paragraph (c)(1) of this section with respect to such stock, and decreased by the amount allowed as a deduction to the United States person under paragraph (c)(3) of this section with respect to such stock.

(2) *Stock owned through certain foreign entities.* (i) In the case of section 1296 stock that a United States person is treated as owning through certain foreign entities pursuant to paragraph (e) of this section, the basis adjustments under paragraph (d)(1) of this section shall apply to such stock in the hands of the foreign entity actually holding such stock, but only for purposes of determining the subsequent treatment under chapter 1 of the Internal Revenue Code of the United States person with respect to such stock. Such increase or decrease in the adjusted basis of the section 1296 stock shall constitute an adjustment to the basis of partnership property only with respect to the partner making the section 1296 election. Corresponding adjustments shall be made to the adjusted basis of the United States person's interest in the foreign entity and in any intermediary entity described in paragraph (e) of this section through which the United States person holds the PFIC stock.

(ii) *Example.* The following example illustrates this paragraph (d)(2):

Example. FP is a foreign partnership. A, a U.S. corporation, owns a 20% interest in FP. B, a U.S. corporation, owns a 30% interest in FP. C, a foreign corporation, with no direct or indirect shareholders that are U.S. persons, owns a 50% interest in FP. A,B,C, and FP are all calendar year taxpayers. In 2002, FP purchases stock in a PFIC for $1,000. A makes a timely section 1296 election for taxable year 2003. On December 31, 2003, the fair market value of the PFIC stock is $1,100. A includes $20 of ordinary income in 2003 under paragraphs (c)(1) and (2) of this section. A increases its basis in its FP partnership interest by $20. FP increases its basis in the stock to $1,020 solely for purposes of determining the subsequent treatment of A, under chapter 1 of the Internal Revenue Code, with respect to such stock. In 2004, FP sells the stock for $1,200. For purposes of determining the amount of gain of A, FP will be treated as having $180 in gain of which $20 is allocated to A. A's $20 of gain will be treated as ordinary income under paragraph (c)(2) of this section. For purposes of determining the amount of gain attributable to B, FP will be treated as having $200 gain, $60 of which will be allocated to B.

(3) *Stock owned indirectly by an eligible RIC.* Paragraph (d)(2) of this section shall also apply to an eligible RIC which is an indirect shareholder under § 1.1296(e)–1(f) of stock in a PFIC and has a valid section 1296 election in effect.

(4) *Stock acquired from a decedent.* In the case of stock of a PFIC which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which a section 1296 election was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this paragraph).

(5) *Transition rule for individuals becoming subject to United States income taxation*—(i) *In general.* If any individual becomes a United States person in a taxable year beginning after December 31, 1997, solely for purposes of this section, the adjusted basis, before adjustments under this paragraph (d), of any section 1296 stock owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value or its adjusted basis on such first day.

(ii) An example of the transition rule for individuals becoming subject to United States income taxation is as follows:

Example. X, a nonresident alien individual, purchases marketable stock in a PFIC for $50 in 1995. On January 1, 2003, X becomes a United States person and makes a timely section 1296 election with respect to the stock in accordance with paragraph (h) of this section. The fair market value of the stock on January 1, 2003, is $100. The fair market value of the stock on December 31, 2003, is $110. Under paragraph (d)(5)(i) of this section, X computes the amount of mark to market gain or loss in 2003 by reference to an adjusted basis of $100, and therefore X includes $10 in gross income as mark to market gain under paragraph (c)(1) of this section. Additionally, under paragraph (d)(1) of this section, X's adjusted basis in the stock for purposes of this section is increased to $110 (or to $60 for all other tax purposes). X sells the stock in 2004 for $120. For purposes of applying section 1001, X must use its original basis of $50, with any adjustments under paragraph (d)(1) of this section, $10 in this case, and therefore X recognizes $60 of gain. Under paragraph (c)(2) of this section (which is applied using an adjusted basis of $110), $10 of such gain is treated as ordinary income. The remaining $50 of gain from the sale of the stock is long-term capital gain because X held such stock for more than one year.

(e) *Stock owned through certain foreign entities*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, the following rules shall apply in determining stock ownership for purposes of this section. PFIC stock owned, directly or indirectly, by or for a foreign partnership, foreign trust (other than a foreign trust described in sections 671 through 679), or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. PFIC stock owned, directly or indirectly, by or for a foreign trust described in sections 671 through 679 shall be considered as being owned proportionately by its grantors or other persons treated as owners under sections 671 through 679 of any portion of the trust that includes the stock. The determination of a person's proportionate interest in a foreign partnership, foreign trust or foreign estate will be made on the basis of all the facts and circumstances. Stock considered owned by reason of this paragraph shall, for purposes of applying the rules of this section, be treated as actually owned by such person.

(2) *Stock owned indirectly by eligible RICs.* The rules for attributing ownership of stock contained in § 1.1296(e)–1(f) will apply to determine the indirect ownership of PFIC stock by an eligible RIC.

(f) *Holding period.* Solely for purposes of sections 1291 through 1298, if section 1296 applied to stock with respect to the taxpayer for any prior taxable year, the taxpayer's holding period in such stock shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.

(g) *Special rules*—(1) *Certain dispositions of stock.* To the extent a United States person is treated as actually owning stock in a PFIC under paragraph (e) of this section, any disposition which results in the United States person being treated as no longer owning such stock, and any disposition by the person owning such stock, shall be treated as a disposition by the United States person of the stock in the PFIC.

(2) *Treatment of CFC as a United States person.* In the case of a CFC that owns, or is treated as owning under paragraph (e) of this section, section 1296 stock:

(i) Other than with respect to the sourcing rules in paragraph (c)(6) of this section, this section shall apply to the CFC in the same manner as if such corporation were a United States person. The CFC will be treated as a foreign person for purposes of applying the source rules of paragraph (c)(6).

(ii) For purposes of subpart F of part III of subchapter N of the Internal Revenue Code—

(A) Amounts included in the CFC's gross income under paragraph (c)(1) or (i)(2)(ii) of this section shall be treated as foreign personal holding company income under section 954(c)(1)(A); and

(B) Amounts allowed as a deduction under paragraph (c)(3) of this section shall be treated as a deduction allocable to foreign personal holding company income for purposes of computing net foreign base company income under § 1.954–1(c).

(iii) A United States shareholder, as defined in section 951(b), of the CFC shall not be subject to section 1291 with respect to any stock of the PFIC for the period during which the section 1296 election is in effect for that stock, and the holding period rule of paragraph (f) of this section shall apply to such United States shareholder.

(iv) The rules of this paragraph (g)(2) shall not apply to a United States person that is a shareholder of the PFIC for purposes of section 1291, but is not a United States shareholder under section 951(b) with respect to the CFC making a section 1296 election.

(3) *Timing of inclusions for stock owned through certain foreign entities.* In the case of section 1296 stock that a United States person is treated as owning through certain foreign entities pursuant to paragraph (e) of this section, the mark to market gain or mark to market loss is determined in accordance with paragraphs (c) and (i)(2)(ii) of this section as of the last day of the taxable year of the foreign partnership, foreign trust or foreign estate and then included in the taxable year of such United States person that includes the last day of the taxable year of the entity.

(h) *Elections*—(1) *Timing and manner for making a section 1296 election*—(i) *United States persons.* A United States person that owns marketable stock in a PFIC, or is treated as owning marketable stock under paragraph (e) of this section, on the last day of the taxable year of such person, and that wants to make a section 1296 election, must make a section 1296 election for such taxable year on or before the due date (including extensions) of the United States person's income tax return for that year. The section 1296 election must be made on the Form 8621, ''Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund'', included with the original tax return of the United States person for that year, or on an amended return, provided that the amended return is filed on or before the election due date.

(ii) *Controlled foreign corporations.* A section 1296 election by a CFC shall be made by its controlling United States shareholders, as defined in § 1.964–1(c)(5), and shall be included with the Form 5471, ''Information Return of U.S. Persons With Respect To Certain Foreign Corporations'', for that CFC by the due date (including extensions) of the original income tax returns of the controlling United States shareholders for that year. A section 1296 election by a CFC shall be binding on all United States shareholders of the CFC.

(iii) *Retroactive elections for PFIC stock held in prior years.* A late section 1296 election may be permitted only in accordance with § 301.9100 of this chapter.

(2) *Effect of section 1296 election*—(i) *In general.* A section 1296 election will apply to the taxable year for which such election is made and remain in effect for each succeeding taxable year unless such election is revoked or terminated pursuant to paragraph (h)(3) of this section.

(ii) *Cessation of a foreign corporation as a PFIC.* A United States person will not include mark to market gain or loss pursuant to paragraph (c) of this section with respect to any stock of a foreign corporation for any taxable year that such foreign corporation is not a PFIC under section 1297 or treated as a PFIC under section 1298(b)(1) (taking into account the holding period rule of paragraph (f) of this section). Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1296 election. Thus, if a foreign corporation is a PFIC in a taxable year after a year in which it is not treated as a PFIC, the United States person's original election (unless revoked or terminated in accordance with paragraph (h)(3) of this section) continues to apply and the shareholder must include any mark to market gain or loss in such year.

(3) *Revocation or termination of election*—(i) *In general.* A United States person's section 1296 election is terminated if the section 1296 stock ceases to be marketable; if the United States person elects, or is required, to mark to market the section 1296 stock under another provision of chapter 1 of the Internal Revenue Code; or if the Commissioner, in the Commissioner's discretion, consents to the United States person's request to revoke its section 1296 election upon a finding of a substantial change in circumstances. A substantial change in circumstances for this purpose may include a foreign corporation ceasing to be a PFIC.

(ii) *Timing of termination or revocation.* Where a section 1296 election is terminated automatically (e.g., the stock ceases to be marketable), section 1296 will cease to apply beginning with the taxable year in which such termination occurs. Where a section 1296 election is revoked with the consent of the Commissioner, section 1296 will cease to apply beginning with the first taxable year of the United States person after the revocation is granted unless otherwise provided by the Commissioner.

(4) *Examples.* The operation of the rules of this paragraph (h) are illustrated by the following examples:

Example 1. X, a United States person, owns stock in a PFIC. X makes a QEF election in 1996 with respect to such stock. For taxable year 1999, X makes a timely section 1296 election with respect to its stock, and thus its QEF election is automatically terminated pursuant to § 1.1295–1(i)(3). In 2000, X's stock ceases to be marketable, and therefore its section 1296 election is automatically terminated under paragraph (h)(3) of this section. Beginning with taxable year 2000, X is subject to the rules of section 1291 with respect to its stock in the PFIC unless it makes a new QEF election. See § 1.1295–1(i)(5).

Example 2. The facts are the same as in *Example 1,* except that X's stock in the PFIC becomes marketable again in 2001. X may make a new section 1296 election with respect to such stock for its tax year 2001, or thereafter. X will be subject to the coordination rules under paragraph (i) of this section unless it made a new QEF election in 2000.

(i) *Coordination rules for first year of election*—(1) *In general.* Notwithstanding any provision in this section to the contrary, the rules of this paragraph (i) shall apply to the first taxable year in which a section 1296 election is effective with respect to marketable stock of a PFIC if such foreign corporation was a PFIC for any taxable year, prior to such first taxable year, during the United States person's holding period (as defined in paragraph (f) of this section) in such stock, and for which such corporation was not treated as a QEF with respect to such United States person.

(2) *Shareholders other than regulated investment companies.* For the first taxable year of a United States person (other than a regulated investment company) for which a section 1296 election is in effect with respect to the stock of a PFIC, such United States person shall, in lieu of the rules of paragraphs (c) and (d) of this section—

(i) Apply the rules of section 1291 to any distributions with respect to, or disposition of, section 1296 stock;

(ii) Apply section 1291 to the amount of the excess, if any, of the fair market value of such section 1296 stock on the last day of the United States person's taxable year over its adjusted basis, as if such amount were gain recognized from the disposition of stock on the last day of the taxpayer's taxable year; and

(iii) Increase its adjusted basis in the section 1296 stock by the amount of excess, if any, subject to section 1291 under paragraph (i)(2)(ii) of this section.

(3) *Shareholders that are regulated investment companies.* For the first taxable year of a regulated investment company for which a section 1296 election is in effect with respect to the stock of a PFIC, such regulated investment company shall increase its tax under section 852 by the amount of interest that would have been imposed under section 1291(c)(3) for such taxable year if such regulated investment company were subject to the rules of paragraph (i)(2) of this section, and not this paragraph (i)(3). No deduction or increase in basis shall be allowed for the increase in tax imposed under this paragraph (i)(3).

(4) The operation of the rules of this paragraph (i) is illustrated by the following examples.

Example 1. A, a United States person and a calendar year taxpayer, owns marketable stock in a PFIC that it acquired on January 1, 1995. At all times, A's PFIC stock was a nonqualified fund subject to taxation under section 1291. A made a timely section 1296 election effective for taxable year 2003. At the close of taxable year 2003, the fair market value of A's PFIC stock exceeded its adjusted basis by $10. Pursuant to paragraph (i)(2)(ii) of this section, A must treat the $10 gain under section 1291 as if the stock were disposed of on December 31, 2003. Further, A will increase its adjusted basis in the PFIC stock by the $10 in accordance with paragraph (i)(2)(iii) of this section.

Example 2. Assume the same facts as in *Example 1,* except that A is a RIC. In taxable year 2003, A would include $10 of ordinary income under paragraph (c)(1) of this section, and such amount will not be subject to section 1291. A also must increase its tax imposed under section 852 by the amount of interest that would have been determined under section 1291(c)(3), and no deduction will be permitted for such amount. Finally, under paragraph (d)(1) of this section, A will increase its adjusted basis in the PFIC stock by $10.

(j) *Effective Date.* The provisions is this section are applicable as of the date final regulations are published in the **Federal Register**.

* * * * *

Par. 5. Section 1.1296(e)–1 is amended by:

1. Revising paragraph (b)(2).
2. Adding paragraph (b)(3).
3. Revising both references to ''sections 958(a)(1) and (2)'' in paragraph (f)(1) to read ''section 1298(a)'.

The revision and addition reads as follows:

§ 1.1296(e)–1 Definition of marketable stock.

* * * * *

(b) * * *

(2) *Special rule for year of initial public offering.* For the calendar year in which a corporation initiates a public offering of a class of stock for trading on one or more qualified exchanges or other markets, as defined in paragraph (c) of this section, such class of stock meets the requirements of paragraph (b)(1) of this section for such year if the stock is regularly traded on such exchanges or markets, other than in *de minimis* quantities, on 1/6 of the days remaining in the quarter in which the offering occurs, and on at least 15 days during each remaining quarter of the taxpayer's calendar year. In cases where a corporation initiates a public offering of a class of stock in the fourth quarter of the calendar year, such class of stock meets the requirements of paragraph (b)(1) of this section in the calendar year of the offering if the stock is regularly traded on such exchanges or markets, other than in *de minimis* quantities, on the greater of 1/6 of the days remaining in the quarter in which the offering occurs, or 5 days.

(3) *Anti-abuse rule.* Trades that have as one of their principal purposes the meeting of the trading requirements of paragraph (b)(1) or (2) of this section shall be disregarded. Further, a class of stock shall not be treated as meeting the trading requirement of paragraph (b)(1) or (2) of this section if there is a pattern of trades conducted to meet the requirement of paragraph (b)(1) or (2) of this section. Similarly, paragraph (b)(2) of this section shall not apply to a public offering of stock that has as one of its principal purposes to avail itself of the reduced trading requirements under the special rule for the calendar year of an initial public offering. For purposes of applying the immediately preceding sentence, consideration will be given to whether the trading requirements of paragraph (b)(1) of this section are satisfied in the subsequent calendar year.

* * * * *

Par. 6. Section 1.6031(a)–1 is amended by:

1. Redesignating the text of paragraph (b)(1) as (b)(1)(i).
2. Adding a heading to newly designated paragraph (b)(1)(i).
3. Adding paragraph (b)(1)(ii).

The additions read as follows:

§ 1.6031(a)–1 Return of Partnership income.

* * * * *

(b) * * * (1) * * * (i) *Filing requirement.* * * *

(ii) *Special rule.* For purposes of this paragraph (b)(1) and paragraph (b)(3)(iii) of this section, a foreign partnership will not be considered to have derived income from sources within the United States solely because a U.S. partner marks to market his pro rata share of PFIC stock held by the foreign partnership pursuant to an election under section 1296.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–19124 Filed 7–30–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–092]

RIN 2115–AA97

Security Zone; Seabrook Nuclear Power Plant, Seabrook, NH

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone around the Seabrook Nuclear Power Plant in Seabrook, New Hampshire. This security zone will close off public access to all land and waters within 250-yards of the waterside property boundary of the plant. This action is

necessary to ensure public safety and prevent sabotage or terrorist acts. Entry into this security zone is prohibited unless authorized by the Captain of the Port, Portland, Maine.

DATES: Comments and related material must reach the Coast Guard on or before September 30, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office Portland, 103 Commercial Street, Portland, ME 04101. Marine Safety Office Portland maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of the docket and will be available for inspection or copying at Marine Safety Office Portland between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780–3092.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–02–092), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your comments reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Portland at the address listed under ADDRESSES explaining why one may be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

In light of terrorist attacks on New York City and Washington, D.C. on September 11, 2001 a permanent security zone is being proposed to safeguard the Seabrook Nuclear Power Plant, persons at the facility, the public and surrounding communities from sabotage or other subversive acts, accidents, or other events of a similar nature. The Seabrook Nuclear Power Plant presents a possible target of terrorist attack due to the potential catastrophic impact nuclear radiation would have on the surrounding area, its large destructive potential if struck, and its proximity to a population center. This proposed security zone prohibits entry into or movement within the specified area.

This proposed rulemaking will establish a security zone encompassing all land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: Beginning at position 42°53′58″ N, 070°51′06″ W; then running along the property boundaries of Seabrook Nuclear Power Plant to position 42°53′46″ N, 070°51′06″ W.

We propose to establish a permanent security zone identical to one we created in a temporary final rule entitled ''Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire'' that was published December 31, 2001 in the **Federal Register** (66 FR 67487). That temporary rule originally was effective until June 15, 2002. Its effective period was extended until August 15, 2002 by a temporary final rule with the same title published May 8, 2002 (67 FR 30807). Another extension will be published in the future to accommodate the time necessary for notice and comment rulemaking on this proposed rule. This proposed rulemaking is necessary to provide permanent protection of the waterfront areas of the Seabrook Nuclear Power Plant.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port or designated Coast Guard representative on-scene. The Captain of the Port may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port.

Any violation of the security zone proposed herein is punishable by, among others, civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. This regulation is proposed under the authority contained in 50 U.S.C. 191, 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this proposed regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community, and signs will be posted informing the public of the boundaries of the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the reasons enumerated in the Regulatory Evaluation section above, we feel this security zone will not have a significant economic impact on a substantial number of small entities. If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Publ. L. 104–121], we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office Portland, at (207) 780–3092. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph(34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.106 to read as follows:

§ 165.106 Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

(a) *Location.* The following area is a security zone: All land and waters within 250 yards of the waterside property boundary of Seabrook Nuclear Power Plant identified as follows: beginning at position 42°53′58″N, 70°51′06″W; then running along the property boundaries of Seabrook Nuclear Power Plant to position 42°53′46″N, 70°51′06″W. All coordinates reference 1983 North American Datum (NAD 83)

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, Maine (COTP).

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Portland, Maine or designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state and federal law enforcement vessels.

(3) No person may swim upon or below the surface of the water within the boundaries of this security zone.

(c) *Authority:* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1223, 1225 and 1226.

Dated: July 23, 2002.

M.P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–19360 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK24

Testimony Certified or Under Oath

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulation that requires written and oral testimony to be certified or given under oath or affirmation in most cases. VA believes that the global requirements in this regulation are no longer necessary to establish the credibility of most testimony offered in support of a claim for benefits. Removal of this regulation will help to streamline the claims process without affecting program integrity.

DATES: Comments must be received on or before September 30, 2002.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC, 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK24''. All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC, 20420, telephone (202) 273–7228. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The current regulation on testimony is found at 38 CFR 3.200. It provides that all oral testimony be given under oath or affirmation and that all written testimony submitted in support of a claim for service connection of a disability or death be certified or given under oath or affirmation. Oddly, the regulation does not require that written testimony submitted in connection with a claim for disability or death pension be certified or given under oath or affirmation. The need for this regulation is now being called into question because of recent changes in the claims process which streamline the acceptance of evidence and require an assessment of credibility in all cases.

The current regulation was created at a time when VA required all evidence and testimony to be in writing or presented orally at a personal hearing. It has changed very little in the last 40 years. But the Veterans Benefits Administration (VBA) is now accepting evidence by fax, e-mail and telephone in addition to written and oral testimony in an effort to streamline the claims process. Any attempt to require formal certification in such cases would only delay the decision making process.

When deciding a claim for disability or death benefits, VBA decision makers routinely make assessments of credibility with respect to evidence presented in support of the claim. This is true regardless of whether any written or oral testimony was certified or given under oath or affirmation. Since these credibility assessments are routinely made, it is unnecessary to require certification or the swearing of oaths or affirmations in all cases. This does not mean that claimants cannot submit certified written testimony or swear oaths or affirmations in connection with oral testimony. Indeed, a claimant may believe that such certification or swearing increases the degree of credibility that may be assigned by a decision maker. For this reason VBA will not prohibit swearing or certification. It will just no longer require it in all cases.

Although the global requirement is being removed, there are other regulations in part 3 which require sworn testimony or certification of evidence in specific instances (see for example § 3.103(c)(2) concerning sworn testimony at personal hearings). The regulations covering those specific instances are not being removed or amended by this proposed action and will remain in effect.

VBA believes that the burden imposed upon claimants for benefits, as well as the administrative burden imposed upon VA itself, entailed by a requirement that claimants swear to oral evidence, or that they certify all written statements, in support of an entitlement to benefits, is too great to justify its retention-especially where evidence is transmitted over the telephone or fax machine. In light of the fact that VA will still retain the ability to discover and deal with fraudulently given statements, the burden of administration outweighs the benefit of retention in this case. In contrast, the burden of administering an oath at an already-convened Regional Office (RO) hearing is minimal, in comparison with the benefit achieved through formally impressing on the witness the need for truthfulness.

This rulemaking reflects VA's goal of making government more responsive, accessible, and comprehensible to the public. The Plain Language Regulations Project was developed as a long-term comprehensive project to reorganize and rewrite in plain language the adjudication regulations in part 3 of title 38, Code of Federal Regulations. This proposed removal is part of a series of proposed revisions to those regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act, Public Law 104–4, March 22, 1995, requires (in section 202) agencies to assess anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposal would have no consequential effect on state, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary certifies that the adoption of this proposal would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposal does not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The catalog of Federal Domestic Assistance program numbers for this proposal are 64.100, 64.101, 64.104, 64.105, 64.109, 64.100, and 64.127.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: June 26, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.200 [Removed]

2. Section 3.200 is removed.

[FR Doc. 02–19327 Filed 7–30–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–63–1–7563; FRL–7253–2]

Approval and Promulgation of Implementation Plans; Louisiana; Control of Emission of Nitrogen Oxides from Lean Burn Engines Within the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The EPA is proposing approval of rules into the Louisiana State Implementation Plan (SIP). In this rulemaking we are proposing to approve, by parallel processing, revisions proposed on April 8, 2002, by the State of Louisiana to the Nitrogen Oxides (NO_X) rules for stationary internal combustion engines/lean burn engines (lean burn engines), within the Baton Rouge (BR) ozone nonattainment area (the April 8, 2002, SIP revision). The State of Louisiana proposed the April 8, 2002, SIP revision to regulate NO_X emissions from lean burn engines within the BR ozone nonattainment area. Section one of this document explains more about this approval. The April 8, 2002, SIP revision will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the BR area.

The EPA is proposing approval of these SIP revisions to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before August 30, 2002.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and shar.alan@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

Throughout this document "we," "us," and "our" means EPA.

1. What Are We Proposing To Approve?

On February 27, 2002, the Governor of Louisiana, submitted rule revisions to LAC 33:III, Chapter 22, "Control of Emissions of Nitrogen Oxides," (AQ215), as a revision to the Louisiana SIP for point sources of NO_X in the BR area and its Region of Influence. We published our proposal to approve the February 27, 2002 SIP revision in a separate **Federal Register** (67 FR 48095, July 23, 2002).

On April 8, 2002, the Governor of Louisiana submitted rule revisions to LAC:33:III, Chapter 22, "Control of Emissions of Nitrogen Oxides," (AQ224), as a revision to the Louisiana SIP for lean burn engines in the BR ozone nonattainment area. The BR area constitutes the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge (40 CFR 81.319). This SIP revision concerns Reasonably Available Control Technology (RACT) for lean burn engines in these 5 parishes. RACT is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979.

On April 8, 2002, the Governor of Louisiana submitted a letter to us requesting that we propose approval of their rule revision concerning RACT for lean burn engines through "parallel processing." *See* 40 CFR part 51, Appendix V for more information on "parallel processing." The State of Louisiana submitted this revision to us as a part of the NO_X reductions needed for the BR area to attain the 1-hour ozone standard. These NO_X reductions will assist the BR area to attain the 1-hour ozone standard.

We are proposing to process and approve the April 8, 2002, SIP revision at the same time as the State is accepting comments and finalizing this rule revision. We refer to this method of simultaneously processing and approving a State's proposed rule revision as "parallel processing." We have based our proposed parallel approval on the State's proposal dated April 8, 2002. If the State's final rule revision is significantly different from its April 8, 2002, revision we will re-propose our rulemaking on the revision.

We are proposing approval of this rule revision under Part D, and section 182(c) of the Act because Louisiana is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the BR 1-hour ozone nonattainment area.

2. What Is the Current Applicability Size Limit for Lean Burn Engines Within the BR Area?

The current applicability size limit for lean burn engines in the BR ozone nonattainment area, is set at 1500 horse power (Hp) or more. The NO_X emission specification for lean burn engines operating in the BR ozone nonattainment area is 4 grams per Hp-hour. For more information on how the emission specification is derived, please see the docket for this proposed action.

3. What Does the Proposed SIP Revision for Lean Burn Engines in the BR Area Say?

The State's proposed SIP revision will lower the applicability size limit for lean burn engines operating within the BR ozone nonattainment area (5 parishes) from 1500 Hp or more to 320 Hp or more. However, the NO_X emission specification for lean burn engines operating within the BR ozone nonattainment area will remain unchanged at 4 grams per Hp-hour. *See*

Chapter 22, section D of Louisiana's rule revisions.

We believe that lowering the applicability size limit for lean burn engines within the BR ozone nonattainment area will bring the major source threshold limit for such engines into agreement with the definition of major source found in section 182(c) of the Act. We also believe that the resulting NO_X emission reductions, due to the lower applicability size limit for lean burn engines within the BR area, will contribute to the attainment of the 1-hr ozone standard in the BR area.

For NO_X regulatory purposes, the LAC 33:III, Chapter 22 requires a source to operate at RACT or more stringent levels during the May 1 through September 30 (ozone season) time frame. The May 1 through September 30 time frame is consistent with the time frame adopted for the ozone transport assessment group rules. *See* 62 FR 60344 published on November 7, 1997. The NO_X emission control methods may vary from one source to another. Due to the fact that NO_X emission control methods differ from one source to another, some sources will need to operate their NO_X control device beyond the above-mentioned ozone season. The State provided us with more information about the seasonality of the NO_X control in Chapter 22, in a letter dated May 3, 2002. We have included State's May 3, 2002, letter in the docket for this rulemaking.

We are proposing approval of these rules revisions under Part D of the Act because Louisiana is relying on these NO_X reductions to demonstrate attainment of the 1-hour ozone standard in the BR ozone nonattainment area. We will be proposing action on Louisiana's attainment demonstration in a separate FR publication.

4. What Are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_X result from burning fuels, including natural gas, gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

5. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. *See* section 1 of this document for a listing of the Louisiana parishes that are nonattainment for ozone.

6. What Is Definition of a Major Source for NO_X?

The BR area was designated a serious ozone nonattainment area (40 CFR 81.319). According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X. Therefore, the major source size for point sources within the BR area is 50 tpy or more, when uncontrolled.

7. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

8. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the CFR at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations that we approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

9. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

10. What Areas in Louisiana Will the Proposed SIP Revision for Lean Burn Engines Affect?

The following table contains a list of parishes affected by the proposed rule revision that we are proposing to approve. If you are in one of these Louisiana parishes, you should refer to the Louisiana NO_X rules to determine if and how today's action will affect you.

TABLE I.—RULE LOG NUMBER AND AFFECTED AREAS FOR LOUISIANA NO_X SIP

Rule log number	Affected areas
LAC 33:III:2201 (AQ224) provisions	Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge parishes.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings.'' This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Nitrogen dioxide, Nitrogen oxides, Nonattainment, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 23, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–19320 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7252–7]

Hazardous Waste Management System; Proposed Exclusion for Identifying and Listing Hazardous Waste and a Determination of Equivalent Treatment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also, ''the Agency'' or ''we'' in this preamble) is proposing to grant two petitions submitted by the University of California—E.O. Lawrence Berkeley National Laboratory (LBNL). The first petition is to exclude (or ''delist'') certain hazardous wastes from the lists of hazardous wastes. Today's proposed rule proposes to grant LBNL's petition to delist its F002, F003, and F005 waste, and requests public comment on the proposed decision. EPA reviewed all of the waste-specific information provided by LBNL and determined that the petitioned waste is nonhazardous with respect to the original listing criteria.

The Agency is also proposing to grant LBNL's second petition, which is for a determination of equivalent treatment (DET) for the catalytic chemical oxidation (CCO) technology that LBNL used to treat the original mixed waste.

EPA reviewed all of the specific CCO treatment information provided by LBNL and determined that the CCO treatment is equivalent to combustion. Today's proposed rule proposes to grant LBNL's DET petition for the CCO technology, and requests public comment on the proposed decision. If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for DOO1 waste. If the proposed delisting and DET become final, then the petitioned waste can be disposed at an authorized low-level radioactive waste facility.

DATES: Comments on this proposed rule will be accepted until September 16, 2002. We will stamp comments postmarked after the close of the comment period as ''late.'' These ''late'' comments may not be considered in formulating final decisions.

Any person may request a hearing on this proposed rule by filing a written request by August 15, 2002. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send two copies of your comments to Rich Vaille, Associate Director, Waste Management Division (WST–1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

Any person may request a hearing on these proposed decisions by filing a written request with Jeff Scott, Director, Waste Management Division (WST–1) U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency Records Center, 75 Hawthorne Street, San Francisco, CA 94105, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The docket contains the petition, all information submitted by the petitioner, and all information used by EPA to evaluate the petition. Call the EPA Region 9 RCRA Record Center at (415) 947–4596 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346. For technical information on specific aspects of these petitions, contact Cheryl Nelson at the address above or at 415–972–3291, e-mail address: nelson.cheryl@epa.gov.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Overview Information

A. What Actions Is EPA Proposing To Approve?

First, EPA is proposing to grant LBNL's petition to have approximately 200 US gallons of residues from treatment of low-level mixed waste from the National Tritium Labeling Facility (NTLF), a research facility located within LBNL, excluded (delisted) from the definition of a hazardous waste. LBNL is a multi-program laboratory operated by University of California under contract with the Department of Energy (DOE). The petitioned wastes are treatment residues generated through treatment of mixed waste. Mixed waste is defined as waste that contains hazardous waste subject to the requirements of the Resource Conservation and Recovery Act (RCRA) and source, special nuclear, or by-product material subject to the requirements of the Atomic Energy Act (AEA). See 42 U.S.C. 6903 (41), added by the Federal Facility Compliance Act of 1992. LBNL's petitioned waste contains tritium, a radioactive hydrogen isotope (^3H) manufactured for use as a tracer in biomedical research.

The petitioned wastes meet the definition of listed F002, F003, and F005 RCRA hazardous wastes because they are derived from treatment of mixed wastes that are listed for these waste codes. LBNL petitioned EPA to grant a one-time, generator-specific delisting for the treatment residues, because LBNL believes that its wastes do not meet the criteria for which these types of wastes were listed. The petition is for a one-time delisting because all of the petitioned waste has been generated, and will not be generated again.

Based on our review, the petitioned waste is essentially tritiated water with no detectable organic chemical constituents, and therefore we agree with the petitioner that the petitioned waste is nonhazardous with respect to the original listing criteria. Furthermore, EPA finds no additional constituents or factors which would cause the petitioned waste to be hazardous under RCRA. Our proposed decision to delist the waste is based upon our evaluation of the process which generates the waste, our first-hand observations of the process used to treat the waste, and our review of the analytical data submitted to support the petition.

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 222 of Pub. L. 98–616 (HSWA), 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4). We compared and evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (3).

We also evaluated the waste for other factors or criteria which could cause the petitioned waste to be hazardous under RCRA. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentrations of the constituents in the waste; (4) the tendency of the hazardous constituents to migrate and to bioaccumulate; (5) persistence of the constituents in the environment once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

If our review had found that the petitioned waste remained hazardous based on the factors for which we originally listed the waste, we would have proposed to deny the petition. If this decision becomes final, the DOE would still retain authority over this waste because of the tritium, a low-level radioactive constituent.

Secondly, LBNL has petitioned EPA under 40 CFR 268.42(b) for a determination that the CCO technology used to perform the treatment of the original mixed waste is equivalent to combustion as defined in EPA's Land Disposal Restriction (LDR) Program for treatment of high-total organic carbon (TOC) subcategory D001 ignitable wastes. Because LBNL's original mixed waste is also a D001 ignitable waste, it must be treated via a combustion technology prior to disposal to meet the LDR treatment standard.

We are proposing to grant the DET because LBNL has adequately demonstrated that the CCO technology is equivalent to combustion for the treatment of organic wastes. This demonstration is based primarily on the following key factors: (1) The CCO achieves a destruction and removal efficiency of more than 99.999% at a temperature near or above 500°C; (2) the CCO system does not emit Hydrogen Chloride Vapor (HCl) or particulate matter; and (3) the CCO was operated in compliance with Federal, State and local hazardous waste and air emission regulations.

If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for DOO1 waste. The LDR treatment standards for F002, F003, and F005 wastes are numeric standards. The CCO technology treated the original mixed wastes to below these numeric standards.

B. How Will LBNL Manage the Waste if These Petitions are Approved?

If EPA's proposed decisions are made final, the petitioned waste will no longer be subject to regulation as a hazardous waste under Subtitle C of RCRA thereby allowing LBNL the option to dispose this low-level radioactive waste at a Nuclear Regulatory Commission (NRC), licensed or a DOE-authorized low-level radioactive waste disposal facility. Without these approvals, the petitioned waste would remain a mixed waste subject to both RCRA regulations and DOE orders. Available treatment facilities for high activity tritium-containing mixed wastes are extremely limited and are not designed to capture the tritium during treatment. There are no available mixed waste disposal facilities for high-activity tritium-containing mixed wastes. LBNL and numerous other research facilities nationally are currently storing this type of mixed waste onsite pending more cost effective and environmentally acceptable treatment and disposal options.

C. When Would EPA Finalize These Proposed Actions?

HSWA specifically requires the EPA to provide notice and an opportunity for public comment before granting or denying a final exclusion. Thus, EPA will not make a final decision to grant an exclusion until it has addressed all timely public comments (including any at public hearings) on today's proposal.

While not required, EPA encourages public involvement in our decision making and is therefore also seeking comments on our proposed DET decision. Additionally, to clearly describe the regulatory approvals needed for LBNL to dispose the petitioned waste offsite, it is necessary to describe both the delisting and the DET petitions.

Since this proposed rule would reduce the existing requirements for a person generating hazardous wastes, the regulated community does not need a six-month period to achieve compliance in accordance with section 3010 of RCRA as amended by HSWA. Therefore, the exclusion and the DET would become effective immediately upon finalization.

II. Background

A. What Laws and Regulations Give EPA the Authority to Delist Wastes?

On January 16, 1981, as part of its regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes from non-specific and specific sources. EPA has amended this list several times. See 40 CFR 261.31 and 261.32. EPA lists these wastes as hazardous because: (1) they exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

''Listed'' wastes are often from specific industrial processes. Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a listed waste is generally hazardous, a specific waste from an individual facility meeting the listing description may not be.

For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility [1] should not be regulated as a hazardous waste. Section 260.20 establishes general procedures for rulemaking petitions, and § 260.22 establishes the specific requirements for a petition to exclude a waste at a particular facility from the list of hazardous wastes in Part 261.

To have their wastes excluded, petitioners must first show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a)(1) and the background documents for the listed wastes. Second, the EPA Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. Accordingly, a petitioner must also demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the EPA to determine whether the waste contains any other toxicants at hazardous concentrations.

See 40 CFR 260.22(a)(2) and the background documents for the listed wastes. Although wastes which are ''delisted'' (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their wastes continue to be nonhazardous based on hazardous waste characteristics (i.e., not exhibiting hazardous waste characteristics, including any promulgated subsequent to a delisting decision.)

In addition, mixtures containing listed hazardous wastes and residues from the treatment, storage, or disposal of listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3(a)(2)(iii) and (c)(2)(i), referred to as the ''mixture'' and ''derived-from'' rules, respectively. Such wastes are also eligible for exclusion but remain hazardous wastes unless and until they are excluded.

On October 10, 1995, the Administrator delegated to the Regional Administrators the authority under 40 CFR 260.20 and 260.22 to approve or deny petitions submitted by generators within their Regions (National Delegation of Authority 8–19) in States not yet authorized to administer a delisting program in lieu of the Federal program. California is not authorized to administer the delisting program and therefore EPA Region 9 has the authority to approve or deny delisting petitions in California.

B. What Is a Determination of Equivalent Treatment?

Under Section 3004(m) of RCRA, EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized''. EPA implements section 3004(m) by establishing land disposal restriction treatment standards based on the performance of best demonstrated available technology (BDAT). We have generally established two types of treatment standards: (1) a numerical, concentration-based treatment limit for each constituent of concern, or (2) a method of treatment that must be used to treat a particular constituent or constituent(s). In either case, the treatment standard is based on the BDAT.

Under the second approach where a technology is specified as the treatment standard, EPA allows facilities to submit petitions (or applications) demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achievable by the EPA-specified method. This demonstration of equivalency, known as a determination of equivalent treatment if approved, is typically both waste-specific and site-specific. Such approvals are based on: (1) Demonstrations of equivalence for an alternative method of treatment based on a statistical comparison of technologies, including a comparison of specific design and operating parameters; (2) the development of a concentration-based standard that utilizes a surrogate or indicator compound that guarantees effective treatment of the hazardous constituents; and (3) the development of a new

[1] Many industrial processes result in the production of hazardous waste, as well as useful products and services. A ''generating facility'' is a facility in which hazardous waste is produced, and a ''generator'' is a person who produces hazardous waste or causes hazardous waste to be produced at a particular place. See 40 CFR 260.10 for regulatory definitions of ''generator,'' ''facility,'' ''person,'' and other terms related to hazardous waste, and 40 CFR part 262 for regulatory requirements for generators.

analytical method for quantifying the hazardous constituents.[2]

Thus, in determining whether a technology is equivalent to the specified technology, EPA carefully evaluates the treatment process, including examining the characteristics of the residuals that are generated, and compares the performance of this alternative treatment process to the specified method of treatment. We also look at any other potential adverse environmental impacts, including releases of hazardous constituents to air and water. See Chemical Waste Management v. EPA, 976 F.2d 2, 17 (D.C. Cir. 1992), explaining the relevance of assessing releases to media other than land in determining whether treatment is minimizing threats, as required by RCRA section 3004 (m).

The original mixed wastes generated by NTLF are regulated under RCRA as F002, F003, F005 and high-TOC D001 category wastes. The applicable LDR treatment standards for F002, F003, and F005 are numeric standards. LBNL treated NTLF mixed wastes with its CCO technology. The treatment residues do not contain any detectable chemical constituents above their respective LDR treatment standards.

The LDR treatment standard for high-TOC ignitable liquid (D001) is a technology standard based upon combustion (40 CFR 268.40). The combustion standard is defined as ''high temperature destruction technologies, such as combustion in incinerators, boilers, or industrial furnaces operated in accordance with the applicable requirements. * * *'' (40 CFR 268.42). While NTLF mixed wastes could be treated via incineration or boiling for energy recovery, the available incinerators or boilers that could treat these wastes would result in release of nearly all of the tritium in the mixed waste to the environment. LBNL developed an alternative technology, the CCO technology, that includes engineering controls designed to capture and retain tritium, so that the mixed waste can be managed in a manner that minimizes releases to the environment. EPA has determined that this CCO technology is equivalent to combustion. If the proposed DET becomes final, the treatment residues generated from LBNL's use of the CCO technology will have met the applicable LDR technology standard for DOO1 waste.

[2] See 40 CFR 268.42(b) and the preamble for the Third Scheduled Wastes; Final Rule (55 FR 22536, June 1, 1990) for more information

C. How Would These Actions Affect States?

This proposed rule, if promulgated, would be issued under the Federal (RCRA) delisting and demonstration of equivalent treatment programs. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally issued exclusion from taking effect in a state. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal and State programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws. Furthermore, some States are authorized to administer a delisting and/or demonstration of equivalent treatment program in lieu of the Federal program, i.e., to make their own decisions. Therefore, these proposed actions, if promulgated, would not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

III. EPA's Evaluation of the Petitions

A. What Waste Did LBNL Describe in Their Petitions to EPA?

On June 30, 1999, LBNL petitioned EPA to exclude from the list of hazardous wastes at 40 CFR 261.31, an initial volume of approximately 105 US gallons and an approximate annual volume of 65 US gallons of CCO treatment residues generated at the NTLF and designated as F002, F003, and F005 listed mixed wastes. F002, F003, and F005 wastes are spent halogenated and non-halogenated solvent mixtures from non-specific sources. LBNL also included in this submittal a demonstration of equivalent treatment petition for this same waste as this waste is also high-TOC subcategory D001 ignitable wastes.

Since submitting the petitions, the NTLF has generated an additional approximately 95 gallons of treatment residues. There will be no additional treatment residues from the CCO process. Therefore, the total amount of waste LBNL has petitioned to delist and for which it has sought demonstration of equivalent treatment approval is a total fixed amount of 200 US gallons.

The EPA reviews a petitioner's estimated volume and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts LBNL's estimate of the fixed volume of waste.

B. What Information and Analyses Did LBNL Submit To Support Their Petitions?

To support its delisting petition under 40 CFR 260.20(b) and 260.22(i), LBNL submitted: (1) a detailed description, including Material Safety Data Sheets, of the chemicals and processes used to generate and treat the wastes, (2) descriptions and schematic diagrams of the treatment system, (3) analyses for total constituent analyses for all organic compounds listed in Appendix VIII of 40 CFR Part 261 using an in-house Gas Chromatograph (GC) equipped with both a Flame Ionization Detector (FID) and a Mass Spectrometer (MS), and (4) total constituent analyses of surrogate nonradioactive samples by an independent commercial laboratory for industrial solvents, volatile organic compounds, and semi-volatile organic compounds using EPA Test Methods 8015 (Modified), 8260, and 8270, respectively.

In addition to the above, to support its DET petition under 40 CFR 268.42(b), LBNL submitted: (1) calculations demonstrating the destruction and removal efficiency for its CCO technology, (2) detailed information on the monitoring and inspection procedures for the CCO technology, and (3) information demonstrating compliance with local and state environmental regulations.

C. How Is the Petitioned Waste Generated?

The petitioned waste is the treatment residues from CCO (treatment) of the original mixed wastes. The original mixed waste was generated by NTLF, a noncommercial research organization designated by the DOE and the National Institutes of Health to conduct tritium labeling research and development. (NTLF began operating in 1982 and was managed by the University of California at LBNL. NTLF ceased conducting National Institutes of Health-funded research on December 31, 2001 and is now undergoing closure.) Treatment options for mixed waste are extremely limited and prohibitively expensive. The only approved treatment option under RCRA for NTLF's tritium-containing mixed waste is incineration or boiling for energy recovery, which result in the release of the tritium to the environment. LBNL and numerous other research facilities nationally are currently storing their tritium-containing mixed waste onsite pending more cost effective and environmentally acceptable treatment and disposal options.

In 1996, LBNL began a study to evaluate the effectiveness of treating tritiated mixed waste using CCO technology. The concept of CCO is to destroy the hazardous portion of the mixed waste while capturing the radioactive portion for future recycling or proper disposal. As part of this study, LBNL constructed two CCO units at the NTLF (one for surrogate non-radioactive wastes and one for mixed wastes) and conducted a treatability study by treating both surrogate and mixed waste samples. The treatability study was conducted in accordance with the California State treatability study exclusion in Title 22 of the California Code of Regulations (CCR) Section 66261.4 (e) and (f).

The CCO technology involves high-temperature decomposition of organic chemicals in the presence of a catalyst. Treatment by the CCO generates mainly carbon dioxide gas and tritiated water. Many of the mixed waste samples prior to treatment contained low concentrations of acetonitrile and some contained low concentrations of chloroform. After treatment the tritiated water did not contain detectable concentrations of acetonitrile and chloroform. The tritiated water was generally acidic with a pH range from 2 to 3 but LBNL staff measured the pH of each batch of tritiated water and neutralized it to a pH of between 5 and 9. The tritiated water is considered RCRA hazardous waste F002, F003, and F005 because it is derived from a mixed waste (due to the ''derived-from'' rule discussed above).

The CCO process also generates bubbler water, which is water that is used in the process to ensure efficient capture of tritiated water from the gas after treatment. Following treatment, the bubbler water is stabilized to prevent release of tritium by mixing it with the silica gel, an inert substance, through which it was vented during the CCO process.

The wastes proposed for delisting are the tritiated water and the bubbler water mixed with CCO-process silica gel.

D. How Did LBNL Sample and Analyze the Waste for the Petitions?

LBNL developed the sampling and analysis plan for the petitioned wastes in consultation with EPA Region 9. LBNL operated two CCO units during the treatability study; one for mixed waste and one for non-radioactive waste surrogate samples [3] that were identical in chemical composition to the mixed waste samples.

Because there are no commercially available analytical laboratories with the ability to analyze high activity mixed wastes from NTLF (due to the level of radioactivity), all analytical testing for these mixed wastes was conducted in-house by LBNL and NTLF staff. As a quality control measure, non-radioactive surrogate waste samples were sent for analysis to an offsite commercial laboratory and results were compared to the in-house data.

The two CCO units were operated using a batch process. Prior to each batch, the mixed waste sample was analyzed in-house to identify each organic chemical constituent and its relative concentration. In many cases, these data were used to create an identical surrogate sample which was also then analyzed in-house prior to treatment. After treatment, the radioactive treatment residue was analyzed in-house to identify any remaining organic chemical constituents. LBNL analyzed the surrogate treatment residues (non-radioactive) in-house and sent splits of the same surrogate residues offsite to a commercial laboratory for analysis. LBNL treated and then analyzed a total of approximately 71 batches of mixed waste samples and 15 batches of surrogate samples. These samples represent 100% of all wastes treated by LBNL during the treatability study. Additionally, LBNL analyzed two bubbler water samples from two different batches of surrogate sample treatment in-house.

As part of the delisting petition, LBNL submitted seven sets of analytical data from mixed waste samples, six sets of data from surrogate waste samples, and two sets of data from the bubbler water. LBNL chose these sets of data as representative of the total data set. LBNL also made available to EPA all of the remaining analytical data from the treatability study. For the in-house testing data, LBNL provided the experimental data documentation from the operation of the CCO, and the test results (GC chromatograms).

LBNL's in-house testing method used direct liquid injection gas chromatography to minimize the volume of the sample. The LBNL method used two detectors, an MS and an FID. Together, these detectors can detect all organic compounds in 40 CFR Part 261, Appendix VIII including those that were present in the original mixed waste and surrogate samples prior to treatment. LBNL also tested all samples for pH in-house using pH strips. LBNL did not test for inorganic or metal compounds because, based upon the processes and chemicals that LBNL used to produce these wastes, these compounds were not present in the original mixed waste or surrogate samples.

The surrogate samples that were sent to an off-site commercial analytical laboratory were analyzed by EPA Test Methods 8015 (modified) for Industrial Solvents and Method 8260 for Volatile Organic Compounds. Several samples were also tested by Method 8270 for Base Neutral and Acid Extractable Organic Compounds (semivolatile compounds).

E. What Were the Results of LBNL's Analysis?

There were no organic compounds above LBNL's quantitation limits in any of the treatment residues or in the bubbler water from the treatment of the original mixed wastes. LBNL's in-house testing procedures were able to achieve a quantitation limit in the range of 0.1 to 0.5 parts per million (ppm).

With the exception of chloroform in very low concentrations (up to 0.011 ppm) in a few samples, detectable organic compounds were not detected in any of the surrogate (non-radioactive) treatment residues. Because chloroform was not present in the original surrogate samples prior to treatment, the chloroform is a laboratory contaminant introduced by the offsite commercial laboratory.

On the basis of generator knowledge, LBNL did not test for inorganic constituents as no inorganic constituents were used in the processes that produced the original mixed waste.

All of the analytical results indicate that the treatment residues are water (with tritium in the radioactive samples) and therefore do not exhibit the hazardous waste characteristics of toxicity; reactivity; or ignitability. As discussed previously, LBNL measured the pH on all treatment residues. The pH ranged from 5 to 9 and therefore none of the residues exhibited the hazardous waste characteristic of corrosivity.

EPA does not generally validate submitted test data before proposing delisting decisions. The sworn affidavit

[3] Joint EPA/NRC mixed waste testing guidance offers two strategies for helping to maintain radiation exposures As Low As is Reasonably Achievable (ALARA) if testing is required for mixed waste. These strategies are the use of a sample size of less than 100 grams, as long as the resulting test is sufficiently sensitive to measure the constituents of interest at the regulatory levels, and the use of surrogate materials, as long as they are chemically identical to the mixed waste and faithfully represent the hazardous constituents in the waste mixture. (Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste. 62 FR 62080 (November 20, 1997)).

submitted with the petition binds the petitioner to present truthful and accurate results under penalty of perjury. LBNL submitted a signed Certification of Accuracy and Responsibility statement required by 40 CFR 260.22(i)(12).

F. How Did EPA Evaluate the Risk of Delisting the Petitioned Waste?

In order for EPA to delist a particular waste, the petitioner must demonstrate: (1) The waste does not meet any of the criteria under which the waste was listed, (2) the waste does not exhibit any of the hazardous waste characteristics defined in 40 CFR 261.21 through 261.24, and (3) there are no additional constituents in the waste other than those for which it was listed, that would cause the waste to be a hazardous waste (40 CFR 260.22(a)). For petitioned wastes that contain detectable chemical constituents, EPA generally makes this determination by gathering information to identify plausible routes of human or environmental exposure (i.e., groundwater, surface water, air) and using fate and transport models to predict the release of hazardous constituents from the petitioned waste once it is disposed. The transport model predicts potential exposures and impacts of the petitioned waste on human health and the environment. The model that EPA uses is a Windows-based software tool, the Delisting Risk Assessment Software (DRAS) Program. The DRAS program estimates the potential releases of waste constituents and predicts the risk associated with those releases using several EPA models including the EPACMTP (EPA's Composite Model for leachate migration with Transformation Products) fate and transport model for groundwater releases. For a detailed description of the DRAS program and the EPACMTP model, see 65 FR 58015, September 27, 2000.

For this petition, EPA believes that LBNL has met the three criteria listed in 40 CFR 260.22(a). For our review, it was not necessary to use the DRAS model because this waste does not contain any detectable concentrations of chemical constituents other than water and tritium (which is not an EPA RCRA regulated waste constituent subject to delisting).

G. What Other Factors Did EPA Consider in Its Evaluation of These Petitions?

We considered other agencies' regulatory controls that would apply to the petitioned waste. The waste proposed for delisting is tritiated water which is a low-level radioactive waste. The waste was generated at a DOE facility and therefore is subject to DOE regulation. If delisted, the waste must be disposed in an NRC-licensed or DOE authorized low-level radioactive waste disposal facility. Because NRC/DOE low-level radioactive waste disposal facilities cannot accept RCRA hazardous waste, the waste must be delisted from RCRA before it can be disposed. If the waste is not delisted, then LBNL must continue to store the waste in their RCRA permitted storage facility (onsite) until such time as a viable disposal alternative is available for the waste.

We also considered the regulatory controls over the operation of the CCO unit. The waste proposed for delisting is treatment residues from catalytic chemical oxidation of mixed waste. LBNL operated the CCO unit under a California State RCRA treatability study exclusion (22 CCR 66261.4(e) and (f)) that provides a conditional exclusion from the hazardous waste regulations. This exclusion is designed to allow small volume studies of new technologies for treatment of hazardous wastes. Once a volume limit has been reached, facilities must obtain a RCRA hazardous waste treatment permit to continue using the treatment technology. The State of California Department of Toxic Substances Control (DTSC), who is the authorized RCRA regulatory authority with jurisdiction over this facility, conducted an extensive investigation of the CCO process and concluded that it was operated in compliance with the treatability study exclusion. LBNL has concluded its treatability study of the CCO process and is no longer using this technology, therefore, there will be no need to seek a permit in the future.

H. What Did EPA Conclude About LBNL's Analysis?

After reviewing LBNL's petition, EPA concludes that: (1) No RCRA hazardous constituents are likely to be present above detection limits in the treatment residues or the bubbler water on silica gel generated by catalytic chemical oxidation treatment of the original mixed waste at LBNL, and (2) the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity, or toxicity. *See* 40 CFR 261.21, 261.22, 261.23, and 261.24, respectively.

We conclude that the waste is delistable because the exposure threat to RCRA hazardous constituents is not existent, therefore achieving a de minimus risk level. Further, even though they are no longer subject to EPA regulatory control, the treatment residues maintain their low-level radioactive waste status and must still be managed in accordance with DOE orders and NRC regulations. By removing EPA regulatory control over this waste, LBNL has the option to dispose the waste offsite at a DOE authorized or an NRC licensed disposal facility.

We also conclude that LBNL has adequately demonstrated that the CCO process is equivalent to combustion for the treatment of organic wastes. This demonstration is based primarily on the following key factors: (1) The CCO achieves a destruction and removal efficiency of more than 99.999% at a temperature near or above 500°C, (2) the CCO system does not emit HCl or particulate matter, and (3) the CCO was operated in compliance with Federal, State and local hazardous waste and air emission regulations.

I. What Is EPA's Final Evaluation of These Petitions?

We have reviewed the sampling procedures used by LBNL and have determined they satisfy EPA criteria for collecting representative samples of the petitioned waste. The descriptions of the treatment process and the analytical data, together with the NRC/DOE requirements that the petitioned waste be managed as low-level radioactive waste, provide a reasonable basis for EPA to grant both the delisting and the DET petitions. We believe the data submitted in support of the petitions show that the waste will not pose a threat when managed as a non-hazardous low-level radioactive waste and disposed of in an NRC-licensed or DOE-authorized low level radioactive waste disposal facility. We therefore propose to grant LBNL an exclusion and a DET for the waste generated by CCO treatment at LBNL.

If we finalize these proposed petitions, the Agency will no longer regulate the petitioned waste under 40 CFR parts 262 through 268 and the permitting standards of part 270.

IV. Conditions for Exclusion

The petitioner, LBNL, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

A. What Conditions Are Associated With This Exclusion?

If the proposed exclusion is made final, it will apply only to 200 US gallons of petitioned waste at LBNL. This is a one-time exclusion for this waste. We would require LBNL to file a new delisting petition if it generates more than 200 US gallons of waste.

LBNL must manage waste volumes greater than 200 US gallons as mixed waste unless and until we grant a new exclusion. If this exclusion becomes final, LBNL's management of the wastes covered by this petition would no longer be within RCRA Subtitle C jurisdiction.

If delisted, the treatment residues would still be low-level radioactive waste subject to NRC regulations and DOE orders. DOE orders require that the petitioned waste be solidified to help prevent mobilization of the tritium. NRC regulations and DOE orders also require that the waste be transported to, and disposed by, NRC-licensed or DOE-authorized facilities. While EPA has no regulatory authority over disposal of radioactive-only wastes, we do have authority to prescribe that the delisted waste be managed and disposed in a manner consistent with our analysis of the acceptable risk for this waste. Our risk analysis is based upon the assumption that the waste, once delisted, remains a low-level radioactive waste subject to DOE Orders and NRC regulations. We therefore propose to condition the delisting upon LBNL properly managing and disposing the waste in accordance with applicable NRC regulations or DOE orders as applicable.

If LBNL discovers that a condition or assumption related to the characterization of this waste that was used in the evaluation of this petition is not as reported in the petition, they will be required to report any information relevant to that condition or assumption in writing to the Regional Administrator within 10 calendar days of discovering that condition.

The purpose of this condition is to require LBNL to disclose new or different information that may be pertinent to the delisting. This provision will allow us to reevaluate the exclusion based on this new information in order to determine if our original decision was correct.

If we discover such information from any source, we will act on it as appropriate. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* to reopen the delisting under the conditions described above.

In order to adequately track wastes that have been delisted, we will require that LBNL provide a one-time notification to any State regulatory agency to which or through which the delisted waste will be transported for disposal. LBNL will be required to provide this notification at least 60 calendar days prior to commencing these activities. Failure to provide such notification will be a violation of the delisting, and may be grounds for revocation of the exclusion or enforcement.

B. What Happens if LBNL Fails to Meet the Conditions of the Exclusion?

If LBNL violates the terms and conditions established in the exclusion, the Agency may start procedures to suspend or revoke the exclusion, and/or initiate enforcement actions.

V. Effect on State Authorizations

This proposed exclusion, if promulgated, would be issued under the Federal RCRA delisting program. States, however, may impose more stringent regulatory requirements than EPA pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (RCRA) or State (non-RCRA) programs), petitioners are urged to contact State regulatory authorities to determine the current status of their wastes under the State laws.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this proposed exclusion, if promulgated, may not apply in those authorized States, unless it is adopted by the State. If the petitioned waste is managed in any State with delisting authorization, LBNL must obtain delisting authorization from that State before the waste may be managed as nonhazardous in that State.

VI. Effective Date

EPA is today proposing to grant LBNL's petition. This proposed rule, if made final, will become effective immediately upon such final publication. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for a facility generating hazardous wastes. EPA believes that this exclusion should be effective immediately upon final publication. These reasons also provide a basis for making this rule effective immediately, upon final publication, under the APA, 5 U.S.C. 553(d).

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a ''regulatory action'' subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of Indian tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 11, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. In Table 1, of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
*	*	* * * * *
Lawrence Berkeley National Laboratory.	Berkeley, California	Treated ignitable and spent halogenated and non-halogenated solvent mixed waste (D001, F002, F003, and F005), and bubbler water on silica gel generated during treatment at the National Tritium Labeling Facility (NTLF) of the Lawrence Berkeley National Laboratory (LBNL). This is a one-time exclusion for 200 US gallons of treatment residues that will be disposed of in a Nuclear Regulatory Commission (NRC) licensed or Department of Energy (DOE) approved low-level radioactive waste disposal facility, after [publication date of the final rule in the FEDERAL REGISTER]. (1) Waste Management: The treated waste residue and bubbler water on silica gel must be managed in accordance with DOE or NRC requirements prior to and during disposal. (2) Reopener Language: (A) If, anytime after disposal of the delisted waste, LBNL possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any organic constituent from the waste is detected in the leachate or the groundwater, then LBNL must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (2)(A) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify LBNL NTLF in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing LBNL with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. LBNL shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days LBNL presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (3) Notification Requirements: LBNL must do the following before transporting the delisted waste off-site: (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if LBNL ships the delisted waste to a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion.
*	*	* * * * *

* * * * *

[FR Doc. 02–19325 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–12391]

NHTSA Vehicle Safety Rulemaking Priorities: 2002–2005

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; correction.

SUMMARY: This document corrects the docket number for a request for comments on NHTSA's vehicle safety rulemaking priorities published on Thursday, July 25, 2002 (67 FR 48599).

FOR FURTHER INFORMATION CONTACT: Lawrence L. Hershman, Office of Safety Performance Standards, NPS–33, National Highway Traffic Safety Administration, Room 5104, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4929. Email: *lhershman@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: The notice that is the subject of this correction was published to announce the availability for review and comment of a planning document that describes NHTSA's proposed vehicle safety rulemaking priorities through 2005. The plan includes those rulemaking actions of highest priority for the period 2002 to 2005, based primarily on the greatest potential protection of lives and prevention of injury that fall within the immediate four-year time frame. The plan was posted on NHTSA's website on July 25, 2002. Comments will be evaluated and incorporated, as appropriate, into planned agency activities. The agency intends to update the plan periodically. Comments that cannot be accommodated in the current plan will be reviewed and considered in the context of future updates.

As published, the notice contained an incorrect docket number. The correct docket number is NHTSA–2002–12391. Comments should be addressed to that docket number.

Correction of Publication

Accordingly, the publication on July 25, 2002 (67 FR 48599) is corrected as follows:

On page 48599, in the heading, the docket number is corrected to NHTSA–2002–12391.

On page 48600, in the second sentence in the second paragraph of the **ADDRESS** section, the docket number is corrected to NHTSA–2002–12391.

On page 48600, in the second sentence of the first paragraph of the How Do I Prepare and Submit Comments? section, the docket number is corrected to NHTSA–2002–12391.

On page 48601, in item number 3. in the How Can I Read the Comments Submitted By Other People? section, the docket number is corrected to NHTSA–2002–12391.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 25, 2002.

Roger A. Saul,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 02–19368 Filed 7–26–02; 4:30 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI 11

Endangered and Threatened Wildlife and Plants; Listing the Beluga Sturgeon (*Huso huso*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In this proposed rule, we, the U.S. Fish and Wildlife Service (Service), propose to list the beluga sturgeon (*Huso huso*) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). The beluga sturgeon inhabits the Caspian and Black Seas, and spawns in the rivers that constitute the drainage basins of these seas. Loss of habitat throughout historic spawning areas due to dam construction and river-modification projects, over-harvest, widespread poaching and illegal trade, and pollution imperil the continued existence of this species. Due to the threat of over-harvest, this species was listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in 1998, when all previously unlisted Acipenseriformes were listed, to conserve all sturgeon and paddlefish species in international trade. Despite the CITES listing, beluga sturgeon populations have continued to decline, and the population structure is increasingly skewed towards sub-adult fish, with a critical lack of spawning-age adult female fish. This proposal, if made final, would extend the Act's protection to this species. The Service seeks data and comments from the public on this proposal.

DATES: We must receive comments and information from all interested parties by October 29, 2002. Public hearing requests must be received by September 16, 2002.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203, or by fax, 703–358–2276, or by e-mail, *Scientificauthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marie Maltese at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *Scientificauthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The beluga sturgeon (*Huso huso*, Linnaeus, 1758), is a member of the genus *Huso,* family Acipenseridae, order Acipenseriformes, class Osteichthyes, phylum Chordata, and kingdom Animalia (Pirogovskii *et al.,* 1989). The family Acipenseriformes encompasses all species of sturgeon and paddlefish, the caviar-producing fishes considered the most economically valuable fish in the world. Sturgeon have been prized for their roe and flesh since ancient times (Bacalbasa-Dobrovici, 1997). The historic range of the beluga sturgeon included the Caspian Sea, Black Sea, Adriatic Sea, Sea of Azov, and all rivers within their watersheds (Khodorevskaya *et al.,* 2000). Range countries include Azerbaijan, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, the Islamic Republic of Iran, Kazakhstan, the Republic of Moldova, Romania, the Russian Federation, Turkey, Turkmenistan, Ukraine, and Yugoslavia. The Adriatic Sea population is considered extirpated, and the last record of a wild-caught specimen in the Sea of Azov occurred during the mid-1980s (TRAFFIC/Europe, 1999).

Birstein (1997) notes that any remnant beluga sturgeon population found within the Sea of Azov is maintained solely through stocking with hatchery-reared fish. The current range of the beluga sturgeon is limited to the Caspian and Black Seas, where until the 1990s, an estimated 80–90 percent of the world's sturgeon harvest were harvested from the Caspian Sea and lower reaches of the Volga River (Khodorevskaya *et al.,* 2000). Records compiled during the 19th Century indicated that the Black Sea *H. huso* population over-wintered and spawned as far north as the Austrian and Bavarian portions of the Danube River.

Beluga sturgeon are extremely vulnerable to depletion due to their unique life-history characteristics. The species is remarkably long-lived and slow to mature. The oldest recorded harvested sturgeon was found to be 118 years of age (DeMeulenaer and Raymakers, 1996), and 100-year-old beluga sturgeon were commonly taken in the northern Caspian Sea during the early 20th Century (Khodorevskaya *et al.,* 2000). However, current estimates indicate that the oldest fish harvested are 50–55 years of age, with the average age less than 35 years old (Khodorevskaya *et al.,* 2000).

Reproductive maturity is reached between 11 and 17 years (Khodorevskaya *et al.*, 1997). Male beluga sturgeon generally spawn once every 4–7 years, whereas females reproduce once every 4–8 years (Raspopov, 1993). Fecundity in adult females increases with age; an individual fish generally produces a greater number of eggs during each subsequent spawning run. Adult females are capable of producing up to 12 percent of their body weight in roe (DeMeulenaer and Raymakers, 1996). Reproductively mature females are targeted in the fishery. Therefore, continuous removal of the older segment of the population has skewed the current population structure towards younger sub-adults, and removed egg-bearing individuals from the population during the life stage that ensures the survival of the species (Khodorevskaya *et al.,* 1997). Many female beluga sturgeon will never reach a size or age that yields peak egg production, and may have only spawned once prior to harvest. Moreover, increased poaching and by-catch indiscriminately harvest juvenile sturgeon, which represent a significant loss to future breeding populations.

The Caspian Sea Population

Khodorevskaya *et al.* (2000) noted that the number of beluga sturgeon in the Caspian Sea was ''considerably lower than those of other acipenserids.'' In 1978, the total population was estimated at 12.1 million individuals, with a decrease to 8.9 million individuals by 1994. Data from a CITES-sponsored status survey conducted in 2001 yielded an estimate of 9.3 million individuals in the northern and central Caspian Sea (Moiseev, 2002). This figure was submitted to the CITES Secretariat by the Management Authority for Sturgeon of the Russian Federation. However, several U.S. fisheries scientists believe the current calculation of the northern and central Caspian Sea beluga sturgeon population may be an over-estimate, because of questions raised about the methodology and data interpretation employed in the survey report. Based on Soviet and Russian Federation fisheries reports, the absolute number of *H. huso* in the wild has decreased dramatically over the past 30 years and continues to decline at an alarming rate.

The population structure of beluga sturgeon in the Caspian Sea has also shifted over the past 30 years, adding to concerns regarding declines in abundance. The efficiency of natural spawning has decreased due to a smaller mean juvenile sturgeon size in the Volga River system (Khodorevskaya *et al.,* 1997), younger mean adult age (Khodorevskaya *et al.,* 2000), a shift in the predominant age of spawning fish from greater than 26 years to 11–17 years, and most notably, the overall lack of available spawning-age fish (Khodorevskaya *et al.,* 2000). During the early 1970s, an estimated 25,000 Caspian Sea beluga sturgeon migrated up the Volga River to spawn. However, by the early 1990s, this estimate had dropped to 7,000 spawning fish (Khodorevskaya *et al.,* 2000). Additionally, the relative percentage of older fish dropped from 16.9 percent during the period 1966–1970, to 3.7 percent during 1991–1995 (Khodorevskaya *et al.,* 2000).

Replacement and augmentation of beluga sturgeon populations with hatchery-produced fish has resulted in an *H. huso* population in the Volga River complex that is believed to consist of 96.3 percent hatchery-reared fish (Khodorevskaya *et al.,* 1997). At the present time, it is believed that the Caspian Sea population is no longer naturally reproducing (Birstein, 1997; Khodorevskaya *et al.,* 1997; Khodorevskaya *et al.,* 2000). Intensive hatchery production has been used as a method of supplementing and maintaining wild stocks since the mid-1950s (Birstein, 1997; Secor *et al.,* 2000). However, stocking programs for Caspian Sea sturgeon decreased during the late 1980s, continued to decline during the upheaval resulting from the dissolution of the Soviet Union in 1991, and persists to the present time. The deterioration of sturgeon stocking programs is attributed to (a) differing priorities of former Soviet nations that are struggling to develop independent economies; (b) an aging hatchery infrastructure throughout the region, and (c) the inability to procure sufficient wild broodstock for beluga sturgeon culture and stocking programs. In 1995, the number of female beluga sturgeon taken in the Volga River delta was considered to be insufficient to support hatchery production efforts (Birstein *et al.,* 1997). This trend continues, as Russian fisheries officials recently observed that there were few, if any, large spawning-age females available to provide hatchery broodstock (TRAFFIC/Europe, 1999).

The World Conservation Union (IUCN) classifies the Caspian Sea *Huso huso* population as endangered (IUCN, 2000). Furthermore, this species is designated as one whose natural reproduction is limited and requires stocking of artificially bred juveniles to maintain the population. Although hatchery releases have helped to augment wild populations during the past 50 years, there is concern throughout the scientific community that stocking programs are only a short-term solution (Birstein, 1997). Artificial hatchery production is only one of many strategies required to protect and increase levels of natural reproduction of sturgeon stocks worldwide. The primary goal is to implement a comprehensive long-term inter-jurisdictional fisheries management plan that includes hatchery production and allocates a shared resource in a sustainable manner.

The Black Sea Population

Beluga sturgeon have been commercially harvested in the Black Sea for more than 2,000 years (Bacalbasa-Dobrovici, 1997b). By the mid-19th Century, harvest of beluga sturgeon declined rapidly, particularly in the Danube River watershed, the traditional spawning grounds for the Black Sea population. Only 16 individuals were taken from 1857 to 1957, in the middle and upper reaches of the Danube River (Hensel and Holcik, 1997). The Iron Gates I (Djerdap I) and Iron Gates II (Djerdap II) dams, constructed late in the 20th Century, blocked spawning migrations, which further reduced the remnant populations of the middle and upper Danube River (Hensel and Holcik, 1997).

By 1835, the beluga sturgeon population in the lower Danube River was also in decline. Commercial landings at the beginning of the 20th Century continued to decrease at a rapid rate. Harvest in the lower Danube River ebbed to 220 tons per year by the 1960s, and by 1994, the fishery was reduced to an average annual harvest of 12.7 tons (Bacalbasa-Dobrovici, 1997b). Beluga sturgeon are listed by IUCN as ''extirpated'' from the upper reaches of the Danube River, ''critically endangered'' in the middle reaches, and ''vulnerable'' in the lower Danube River (Hensel and Holcik, 1997; IUCN, 2000).

Summary of Factors Affecting the Beluga Sturgeon

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to beluga sturgeon (*Huso huso*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Beluga Sturgeon Habitat or Range

Current data suggest that beluga sturgeon populations are highly depleted and natural reproduction is limited to a small, highly compromised portion of the species' historic spawning habitat. Approximately 85 percent (Secor *et al.,* 2000) to 90 percent (Barannikova *et al.,* 1995) of all spawning grounds previously utilized by the Caspian Sea beluga sturgeon population have been destroyed or are no longer accessible for spawning runs because of dam construction and other river modifications. Messier (1998) noted that the surface area of the Caspian Sea is some 169,000 square miles, yet all sturgeon species that spawn in the Volga River utilize an area no larger than 1,000 acres (405 hectares) near the mouth of the river. Secor *et al.* (2000) observed that greater than 90 percent of the current Caspian Sea beluga sturgeon population is believed to be hatchery-reared progeny. Beluga sturgeon no longer spawn in Azerbaijan, and spawning is limited in the Russian Federation, Turkey, the Ukraine, and several rivers in Iran (DeMeulenaer and Raymakers, 1996).

Dams, river channelization, and other man-made changes to flow regimes significantly reduced the amount of available spawning habitat throughout sturgeon range countries. The Volga, Ural, Kura, Terek, and Sulak Rivers are all segments of the species' former historic spawning range. Today, the Ural River is the only river system within the Caspian Sea region that is not dammed and continues to allow adequate passage to historic spawning areas (Khodorevskaya *et al.,* 1997). Recent information suggests that poaching may have destroyed the Ural River beluga sturgeon spawning stock (DeMeulenaer and Raymakers, 1996).

During the 1950s, all remaining northern and western Caspian Sea tributaries were dammed for hydroelectric power generation (DeMeulenaer and Raymakers, 1996). It is believed that the Volga River may sustain 6,000–8,000 beluga sturgeon of spawning age. Of this figure, approximately 2,000 are believed to be mature females (Khodorevskaya *et al.,* 1997). However, construction of the Volgograd Dam from 1958 to 1960 reduced traditional spawning grounds by 88 percent (Levin, 1995). An estimated 208,000 hectares in additional river systems throughout the Russian Federation have been lost as potential spawning grounds for beluga sturgeon due to river modifications. The spawning grounds of the Don and Kuban Rivers in the Russian Federation are no longer accessible to spawning sturgeon. The Terek and Sulak Rivers, and the Sea of Azov are likewise compromised by pollution and damming. These areas can no longer sustain spawning runs of beluga sturgeon (Khodorevskaya *et al.,* 1997).

In Iran, the Mangil Dam on the Sefidrud River is another barrier to traditional spawning runs. Additionally, Hensel and Holcik (1997) suggested that the Sefidrud River sturgeon spawning migration is also unproductive because traditional spawning areas have been destroyed by heavy industrial pollution and water extraction.

Approximately 85 percent of the Black Sea's Danube River delta has been diked, producing over 300 reservoirs throughout the river basin. Substantial losses of sturgeon spawning habitat in the area have been attributed to dam and reservoir construction, other man-made river modifications, and increased sand and gravel dredging (Bacalbasa-Dobrovici, 1997b). Beluga sturgeon were once abundant in the Danube River. Harvest rates during the mid-1970s averaged 23 metric tons annually. However, after the construction of the Djerdap Dams I and II during the mid-1980s, harvest rates continued to drop (Hensel and Holcik, 1997). By 1994, annual estimates of beluga sturgeon harvest declined to12.7 tons, indicative of the dams' effect on spawning sturgeon populations (Bacalbasa-Dobrovici, 1997b). The *H. huso* population in the lower reaches of the Danube River is considered non-self-sustaining by international fisheries scientists. In the late 1980s, Turkish authorities located only five or six mature females in the Coruh River, and an additional 20 mature females in the Kizikirnak River during a quest to collect broodfish for hatchery programs (Edwards and Doroshov, 1989).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is the most significant factor in the rapid decline of the beluga sturgeon. The expansion of legal sturgeon fisheries in former Soviet range nations after the dissolution of the Soviet Union, and consequent disregard of the former Soviet moratorium on harvest of open sea sturgeons (Secor *et al.,* 2000) have resulted in intensified fishing effort and over-exploitation that have further reduced populations already in decline for decades. The effects of legal harvest are further compounded by the ever-increasing illegal harvest of the species. DeMeulenaer and Raymakers (1996) estimated the illegal harvest at 6–10 times larger than the legal market, although more recent assessments put that estimate at 11 times greater than the legal market (Volkov, 2001). Illegal harvest and trade rapidly escalated during the 1990s, and continue as the price of beluga sturgeon caviar rapidly spirals upward.

The international demand for caviar is the primary factor driving over-exploitation of the beluga sturgeon. In 1995, the retail price for one pound of beluga caviar in the United States was $1,000.00 (DeMeulenaer and Raymakers, 1996); today beluga caviar sells for $1,500.00 per pound on the U.S. retail market (Petrossian, 2002).

Sturgeon are killed to collect their roe, thereby removing spawning-age adults from the population prior to spawning. In this fishery, male fish are also killed because the sexes are morphometrically similar and it is nearly impossible to visually distinguish a male from a female sturgeon. Furthermore, harvesting the younger segment of a population removes fish that may have spawned only once, if at all. Therefore, these fish never reach the age of maximum egg production, when an individual's contribution to the survival of the species is greatest.

The caviar market is highly lucrative and involves a product that is readily poached, in great demand, generates maximum prices, and is packaged in small containers that are relatively easy to smuggle. Although the caviar trade has been a highly profitable economic staple in the region for centuries, it was formerly conducted under a strictly controlled monopoly in Tsarist Russia and the Soviet Union. The sturgeon fishery was closely monitored, substantially restricted, and highly regulated. Program highlights included specific harvest regulations, a moratorium on open-sea harvest, and a stocking program that has been in effect continually from the late 1950s, albeit in much-reduced circumstances since the late 1980s (Secor *et al.,* 2000).

The northern Caspian Sea sturgeon fishery declined rapidly after the dissolution of the Soviet Union in 1991. The loss of centralized control resulted in resumption of open-sea sturgeon fisheries, rapidly escalating illegal harvest, a lack of effective enforcement measures, and reduced availability of wild broodstock, which sharply curtails hatchery production and re-stocking programs.

During the 1950s, sturgeon harvest effort was reduced due to technological advancements ascribed to the use of plastic nets in the fishery. However, this improvement for fishers proved disastrous for sturgeon because the new nets profoundly increased the number of juvenile sturgeon taken incidentally to targeted harvest of other Caspian Sea species. In 1957, 1.8 million juvenile sturgeon, of a total 2.6 million sturgeon harvested in the Caspian Sea, were taken as by-catch. By-catch of pre-spawning-age sturgeon increased to an estimated 2–3 million fish by 1959–1961 (Khodorevskaya *et al.,* 1997). In 1967, the Soviet Union instituted a ban in the Caspian Sea on open-sea harvest of all anadromous fish species, to eliminate by-catch mortality of juvenile sturgeon (Secor *et al.,* 2000). However, with the loss of the Soviet state sturgeon monopoly, by-catch of juvenile and adult beluga sturgeon is once again common in open-sea Caspian Sea fisheries, particularly the anchovy fishery (TRAFFIC/Europe, 1999). The effect of by-catch on beluga sturgeon populations has not been recently quantified. However, the resumption of open-sea fisheries harvest in the Caspian Sea increases the risk of injury and mortality to all juvenile and adult sturgeon, adding to the decline in populations, potential changes to already skewed population structures, and a significant impact on future stock recruitment.

In 1970, the Caspian Sea beluga sturgeon harvest was estimated at 2,800 tons, but by 1994, less that 300 tons were legally taken (Khodorevskaya *et al.,* 1997). The most recent estimates of yield, based on 1970s fishery data, indicate that 7 kg of caviar are retrieved for every 100 kg of total harvest (males and females; Doroshov and Binkowski, 1985, *cited in* Williot and Bourguignon, 1991). Excepting Iran, the countries that participate in the Caspian Sea sturgeon fishery are still developing an effective regional sturgeon management program.

C. Disease or Predation

Disease and reproductive abnormalities associated with pollution have been observed in beluga sturgeon throughout their range. The World Bank estimates that one million cubic meters of untreated industrial wastewater are discharged annually into the Caspian Sea (U.S. Dept. of Energy, 2000). Contamination byproducts from fossil fuel exploration, production, and refining, untreated sewage, agricultural runoff, and other industrial effluents exacerbate the problem. These toxins have been associated with reproductive abnormalities, tumors, and large fish kills in the Caspian Sea (U.S. Dept. of Energy, 2000).

Large-scale muscle degeneration has also been observed in all sturgeon species inhabiting the Caspian Sea. It has been suggested that muscular atrophy is caused by toxicosis resulting from increasing pollution levels throughout the region. Bio-accumulation of heavy metals and toxins associated with pesticides in the muscle and organ tissue of this long-lived species is of grave concern. Likewise, bio-accumulation of hazardous wastes may be having an effect on the reproductive health of the species. Sampling conducted during 1990 yielded abnormalities in 100% of the sturgeon eggs collected in the Volga River (all species were sampled), and even more alarming, 100% of the embryos studied were non-viable (Khodorevskaya *et al.,* 1997). Hatchery-reared sturgeon are not immune to disease problems. Anecdotal information indicates that many of the stocked hatchery-reared fish are blind, due to an eye parasite (R. St. Pierre, personal communication).

The ctenophore, American comb jellyfish (*Mnemiopsis leidyi*), was introduced into the Black Sea in 1982, from dumping of ship ballast water. Given that there are no known Black Sea predators of the comb jellyfish, its growth has been explosive. Within 7 years, the biomass of *M. leidyi* in the Black Sea had grown to 800 million metric tons (Bacalbasa-Dobrovici, N.,1997a). Comb jellyfish feed on prey that are utilized by small marine fishes, such as anchovies, and include zooplankton, pelagic fish eggs, embryos, and larvae. These fish are in turn preyed upon by the piscivorous beluga sturgeon. To characterize this concern, the feeding habits of the comb jellyfish resulted in the complete collapse of the Sea of Azov anchovy fishery in 1989. The changes in invertebrate distribution and faunal structure caused by *M. leidyi* has had a profound influence on Black Sea sturgeon populations by altering their prey base (Kovalev *et al.,* 1994, as cited in Bacalbasa-Dobrovici, 1997a).

D. The Inadequacy of Existing Regulatory Mechanisms

Currently, harvest of beluga sturgeon is prohibited in Moldova and the Ukraine. It remains a commercially harvested species in all other range countries. *Huso huso* was listed in the Red Data Book of the Ukraine in 1992, so there has been no commercial harvest in the Ukraine since that time. Most range states require a commercial fishing license, although Azerbaijan did not establish this requirement until 2000. Annual catch quotas are set by Azerbaijan, Bulgaria, the Czech Republic, Iran, Kazakhstan, Romania, the Russian Federation, and Yugoslavia. Iran and Turkmenistan prohibit all private sturgeon fisheries; the fishery is a state-controlled monopoly in these countries. In 1996, the Caspian Sea range countries signed an agreement that would prohibit open-sea fishing, thereby protecting immature sturgeon stocks. However, the agreement has been difficult to enforce and large-scale organized poaching continues.

Despite the quotas, the agreement banning open-sea fishing, and other conservation measures taken by range countries, the sturgeon fishery continues to be exploited by each range country without adequate fishery management programs that would utilize the fishery as a shared resource. We hope that the regional management program that is currently being prepared for submission to the CITES Secretariat in June 2002 will address the importance of inter-jurisdictional management of all sturgeon species, including beluga sturgeon. Khodorevskaya (2000) and TRAFFIC Europe-Russia (1999) noted that many scientists and regulators believe that the failure of regulatory oversight in the Caspian Sea region is an important factor contributing to the rapid decline of beluga sturgeon populations.

Although Iran continues to implement a successful annual stocking program, as well as strict management and enforcement measures to conserve beluga sturgeon, the remaining harvesting nations of the Caspian Sea have yet to implement effective inter-jurisdictional sturgeon management programs. Many stocking programs initiated during the 1950s to replenish sturgeon stocks have been seriously curtailed due to the lack of state support, plant closures, an aging hatchery infrastructure with inadequate funding for maintenance, and severely reduced production (Birstein *et al.,* 1997; Secor *et al.,* 2000). Compounding the deterioration of formerly successful hatchery and re-introduction programs in the northern and central Caspian Sea area, there is an absence of available wild mature broodstock to augment wild populations and improve the genetic variability of those fish currently held in hatcheries for culture purposes (Birstein *et al.,* 1997; Secor *et al.,* 2000).

Beluga sturgeon was first listed as endangered by the IUCN in 1996 (IUCN, 2000). In an assessment by TRAFFIC (1999), the state of all Russian sturgeon populations was considered ‘‘catastrophic.’’ International conservation measures were taken in 1998 to address escalating concerns regarding the status of Caspian Sea sturgeon. At that time, all previously unlisted Acipenseriformes species were included in Appendix II of CITES. An Appendix-II listing requires that all specimens of listed species, including parts and products, must be accompanied by an export permit issued by a designated Management Authority in the country of origin. An export permit may only be issued after two findings are made: the Management Authority must find that the specimen(s) were legally acquired, and the designated Scientific Authority must determine that allowing the export will not be detrimental to the survival of the species.

In 2001, the results of the CITES ‘‘Review of Significant Trade’’ (Resolution Conf. 8.9 (Rev.)) prompted the CITES Standing Committee to recommend, with the full agreement of the Caspian Sea nations, a plan of action to ensure control over the trade in sturgeon products, improve law enforcement efforts, and facilitate the development of regional cooperative management plans for all Caspian Sea sturgeon species. These recommendations also included a 90 percent reduction of the 2001 sturgeon harvest quotas, and closure of the fall 2001 harvest season. In June 2001, the CITES ‘‘Paris Agreement,’’ developed at the 45th meeting of the CITES Standing Committee, required the Russian Federation, Azerbaijan, and Kazakhstan to develop a regional management and monitoring plan for beluga and other sturgeon species at risk. Turkmenistan, although not a signatory to CITES at that time, planned to assist in the development of this inter-jurisdictional management program. The Paris Agreement requires submission of the draft management plan to CITES authorities no later than June 30, 2002. The details of the plan's provisions to reduce or halt stock declines, decrease poaching levels, curb illegal trade, and rebuild spawning populations are unknown at this time. Finally, the Caspian Sea nations were directed to conduct a comprehensive survey of Caspian Sea sturgeon populations before December 31, 2001. Preliminary reports indicate that only 28 beluga sturgeon were located during the survey, and over 75 percent of those specimens were immature fish. The final report, including an analysis of data from the completed survey, contains sturgeon population abundance estimates and has been posted on the web site of the CITES Secretariat.

Earlier this year, the Management Authority for Sturgeon of the Russian Federation, representing the four former Soviet range states (Azerbaijan, Kazakhstan, Russian Federation, and Turkmenistan), submitted a document to the CITES Secretariat entitled: ''Total allowable catch (TAC) estimation for sturgeon species in the Caspian Sea.'' This document discussed the methodology used to derive total allowable catch (TAC) limits for the Caspian Sea sturgeon fishing stock, and supports the nations' declaration of Caspian Sea sturgeon harvest quotas established for the 2002 fishing season. The TAC report was based on the results of sampling conducted in the northern and central Caspian Sea from August 9 through September 25, 2001. Sampling was undertaken as the result of a three-stage, 12-month plan of action that was produced during the 45th meeting of the CITES Standing Committee. This plan was developed to assist the Caspian Sea nations in the creation of a science-based management system for the long-term conservation and sustainable use of sturgeon (CITES Secretariat, 2001). The goal of the survey was to estimate the abundance of each sturgeon species, the number of reproductively mature individuals of each species, and the potential size of the entire sturgeon spawning stock by species (Moiseev, 2002). However, after review of the TAC report, several U.S. fisheries experts (P. Bettoli Ph.D., Professor of Biology, Certified Fisheries Scientist, and Assistant Unit Leader, Tennessee Cooperative Fishery Research Unit of the U.S. Geological Survey-Biological Resources Division; M. Parsley, Research Fishery Biologist, Columbia River Research Laboratory, U.S. Geological Survey Western Fisheries Research Center; R. St. Pierre, Fishery Management Biologist, U.S. Fish and Wildlife Service, who serves on the Sturgeon Specialists Group (SSG) of The World Conservation Union (IUCN); D. Secor, Ph.D., Associate Professor, Chesapeake Biological Laboratory; personal communications) found the document to be lacking important data necessary in the formation of fishery stock estimations.

These data include sampling effort, spatial and temporal distribution of sampling effort, number of fish taken per trawl in each specified area, and size and age distribution of sturgeon taken. Several reviewers questioned the derivation of the value of the fishing efficiency co-efficient of 0.04 that was used for beluga sturgeon. This information is an important construct used to estimate stock abundance and total allowable catch. Calculations based on an incorrect fishing efficiency coefficient have a large impact on the total stock estimate (Bettoli, personal communication). Each reviewer noted that, although we are given the total size of the area sampled, and the approximate area sampled by the trawls, the TAC report does not list the total number of sampling trawls made, an important variable used to calculate fishing effort, and consequently, to determine population size. Furthermore, although the number of sturgeon captured was tabulated in the report, it is impossible to interpret these data without information about the size or age of the individuals. The total number of trawl samples that failed to capture beluga sturgeon was unavailable, as well as any indication that might explain the way in which data were utilized when calculating *N,* the population size.

A basic assumption used in calculating abundance is that fish are not evenly distributed across all habitats in large water bodies. It is highly likely that, of the numerous sample trawls made during the survey, many did not contain beluga sturgeon. Catch variation was probably great, because some hauls may have comprised several or even many fish, whereas others were empty. One reviewer noted that the *N* statistic should have been calculated considering the range in variance; he observed that the actual population estimate for Caspian Sea beluga sturgeon is very likely much lower than the 9.3 million fish presented (R. St. Pierre, personal communication). Another reviewer independently confirmed the problem of determining *N* without accounting for trawls that failed to capture fish. He noted that a considerable number of tows must have failed to capture sturgeons. Excluding these tows from the data analysis would result in a ''gross over-estimation of *N*.'' Consequently, an erroneous calculation of *N* renders all other calculations incorrect if they are based on *N* (M. Parsley, personal communication). Furthermore, another variable, the distribution area (*S*), was not clearly defined. Although the report listed several different estimates of area, it was unclear which was used as *S*. It is impossible to confirm the estimate of *N* without a clear definition of *S*, which ultimately leads to the estimate of TAC.

The methodology used to determine a TAC of 9–17 percent of the stock was also of concern, since the TAC report disclosed the quotas for the 2002 harvest season, but did not adequately explain how TAC was derived. The natural mortality rate of the stock was used as a biological reference point (BRP) for determining abundance; however, this estimate likely may be inflated. The TAC report assumed a natural mortality rate of 13–14 percent for beluga sturgeon, but Bettoli noted that a species with a maximum lifespan of 50–70 years would normally be expected to have a natural mortality rate closer to 6–8 percent. Using an incorrect natural mortality rate could also lead to additional faulty conclusions. Bettoli also noted that natural mortality should not be used as a BRP, because it cannot be manipulated.

The TAC report included no discussion of the methodology used to calculate gear efficiency, an important consideration when estimating abundance. A lower gear efficiency for the 9-meter trawl for beluga, compared to that for other species, suggests that the trawl was selective for sturgeon size. Beluga sturgeon are much larger in size and weight than the other species sampled; a 9-meter trawl would probably sample only smaller, non-reproductive-age sturgeon. Gear efficiency is a meaningful variable, considering that an average gear efficiency for beluga sturgeon would probably, as noted above, over-estimate abundance for small juveniles, as this size range would be captured most frequently. An average gear efficiency would also capture few, if any, reproductive-age beluga sturgeon, thereby under-estimating abundance for this segment of the population. Secor noted that the trawl survey should be used only as a method to determine abundance of juvenile and sub-adult beluga sturgeon. If this sampling method were used for adult beluga sturgeon, the results would likely be distorted.

Beluga sturgeon are known for skewed and variable size and age distributions. Population structure analyses indicate that the juvenile proportion of the species is the largest proportion of the stock, and it is commonly held that hatchery stocking maintains this segment of the population. Therefore, many scientists believe that, without continued stocking with hatchery-reared progeny, the species might conceivably be extirpated throughout its range. However, the assumption that Caspian Sea beluga sturgeon populations are maintained solely through hatchery contributions has not been satisfactorily verified. A wealth of fisheries data has been collected over the decades for the Volga, Danube, and Ural River systems. However, there is a need to assess the potential contributions to the stock from populations living within the smaller tributaries of the Caspian and Black Seas. At the present time, this data is limited, and it is crucial that studies of these populations are developed and funded. This data is vital for management purposes, as well as plans for future stock enhancement. These population studies must be conducted to prevent the possibility of losing entire, and at this time relatively unknown, population segments that may have a larger impact on overall stocks than previously suspected.

Harvest of beluga sturgeon in the currently permitted open-sea fishery of the northern and central Caspian Sea, rather than abiding by the former laws limiting harvest to the tributaries, raises the concern of impacts to mixed-stock populations that occupy these open waters. If this fishery is allowed to continue, it could lead to extirpation of local stocks, as it is impossible to determine from which specific population individual fish are harvested. Additionally, harvest could disproportionately affect a population that is already vulnerable to over-exploitation (D. Secor, personal communication).

One of the most serious concerns, noted by all of the reviewers, was the absence of uncertainty, or estimate variance, that should have been built into the data analysis presented in the TAC report. The reviewers also noted that the quotas allocated for 2002, particularly the quota for beluga sturgeon, are probably too liberal.

The current minimum-size limits for all Russian sturgeons does not effectively protect the most vulnerable life-stage, mature females, and it is unclear how these limits were derived. The minimum-size limit for beluga sturgeon is less than the average size of a mature adult fish. This permits take of sub-adult fish that have not previously spawned, and renders the species particularly vulnerable to recruitment over-fishing. Beluga sturgeon are the most sensitive of all the Caspian Sea sturgeon species to over-exploitation, due to late maturation and infrequent spawning.

The reviewers commended the Russian Federation for their hatchery and stocking programs for beluga sturgeon. However, they were concerned about the efficacy of stocking due to the lack of assessment and monitoring of the program. The number of fish stocked per unit area is modest, and values such as the yield-to-fishery coefficient (percent survival), which might yield a greater understanding of the results of the program, were not included in the TAC report. Hatchery fish are not tagged, and there is no evidence of mark-recapture studies to validate the effort.

Finally, the reviewers were unable to re-create the estimates of TAC based on the limited information and methodology provided (M. Parsley and P. Bettoli, personal communication). Moreover, there was concern that the TAC report failed to factor in estimates of illegal harvest and its impacts on population abundance and structure. The approach used in preparing the TAC report appeared to be lacking in requisite data, and many assumptions were made without providing supporting data that would allow others to independently verify the methods used to construct these assumptions. The omission of variance statistics was of special concern to the reviewers; the lack of these statistics is one of the many indications that the monitoring program should currently be characterized as experimental and in need of further verification and modification before it can be considered a fully effective assessment tool. Continuing to utilize the approach used to estimate TAC, as detailed in this report, would not provide for sustainable future harvest unless factors that influence catch per unit effort (CPUE), such as increasing fishing efficiency, are considered. This approach could conceivably result in collapse of the fishery (M. Parsley, personal communication).

The illegal trade in beluga sturgeon is conducted outside the confines of CITES regulations. As noted previously, it is believed to be 6–10 times that of the legal trade (DeMeulenaer and Raymakers, 1996). The use of falsified documents, caviar mislabeling, mixing of species in processed and packaged caviar, and export from countries that are not beluga sturgeon range countries is widespread. Smuggling is relatively easy, because caviar is packaged in small, lightweight containers, and large amounts can be easily transported.

Poaching and smuggling have been intensively reported in the media of range nations and importing countries (Evtouchenko, 1997; McDonald, 2000; Snyder, 2000). Confiscations have occurred regularly in the United States. In the Black Sea region, Turkey and Georgia are among the countries that report illegal harvest in their waters. In short, there exists a lack of sufficient enforcement capability and ensuing penalties for wildlife crimes.

E. Other Natural or Man-Made Factors Affecting the Continued Existence of Beluga Sturgeon

Cyclic changes in sea level within the Caspian Sea have been common throughout geologic time (Ivanov, 2000). A drop in sea level from 1970 through 1977 adversely affected sturgeon populations due to changes in biochemical regimes and the subsequent changes in faunal communities (Ivanov, 2000; DeMeulenaer and Raymakers, 1996). Although a rise in water level between 1978 and 1989 may have had a positive effect on other sturgeon species, the average weight of beluga sturgeon continued to decrease from 110 kg in 1970, to 57 kg in 1991 (Khodorevskaya *et al.,* 1997).

Genetic alteration and hybridization of sturgeon stocks is also a serious concern. It is postulated that the Volga-Don Canal, linking the Black Sea and the Caspian Sea, allowed for an ''avalanche'' of genetic alteration and hybridization between these sturgeon populations (DeMeulenaer and Raymakers, 1996). Although hybridization occurs naturally when artificial connections are made between previously isolated water bodies, the rapidity with which hybridization occurs is accelerated. This process can impact the homogeneity of populations and further hamper recovery efforts.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by beluga sturgeon in determining to propose this rule. Based on this evaluation, the preferred action is to list Huso huso as endangered. If no action were to be taken, import of beluga caviar into the United States (the third-largest beluga caviar importing nation in the world) would continue. As a result, fishing effort would increase to meet market demand, and absolute numbers of available adult female fish would continue to decline. The scarcity, popularity, and demand for beluga sturgeon caviar is driving a market that cannot be satisfied by current supply, and prices during the last decade have escalated ten-fold to reflect the demand. Presently, a pound of beluga sturgeon caviar retails for about $1,500.00. The significant profit margin resulting from this scarce commodity further fuels the trade. Illegal harvest and trade is particularly attractive to fishermen in developing former Soviet nations that can make hundreds of dollars per fish and traders that realize much larger profits. It is quite likely that continued trade will increase the rapidity of beluga sturgeon stock declines. Current hypotheses indicate that natural reproduction can no longer sustain wild beluga sturgeon populations. Indeed, some scientists suggest that wild stocks are now sustained only through inadequate hatchery production and stocking programs. It is quite possible that we are rapidly approaching the critical point were the species will no longer be recoverable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. However, given that beluga sturgeon are not native to the United States, no critical habitat is being proposed for designation with this proposed rule.

With respect to the beluga sturgeon, no Federal activities, other than the issuance of CITES import and export permits, are currently required. Because the beluga sturgeon is listed in Appendix II of CITES, a finding of non-detriment must be issued by the Service's Division of Scientific Authority (DSA), and the Service's Division of Management Authority (DMA) must make a legal acquisition finding, before a CITES export permit can be issued for beluga sturgeon. However, listing of beluga sturgeon as endangered under the Act would require the issuance of Endangered Species Act import and export permits by DMA, and consequently a consultation with DSA prior to the issuance of the permit.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that generally apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), within U.S. territory or on the high seas, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees or agents of the Service, and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR part 17.22 and 17.23. Such permits are available for scientific research purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to: Division of Scientific Authority, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203, (telephone: (703) 358–1708; facsimile: (703) 358–2276).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Commenters may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public comment in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of the publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to: Chief, Division of Scientific Authority, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek expert opinions of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended.

This rule contains no information collection requirements. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

References Cited

Bacalbasa-Dobrovici, N.1997a. Endangered migratory sturgeons of the lower Danube River and its delta. Environmental Biology of Fishes. 48: 201–207.

Bacalbasa-Dobrovici, N. 1997b. Danube caviar in danger. Sturgeon Quarterly, 5:1–2.

Barannikova, I. A., I. A. Burtsev, A.D. Vlasenko, A.D. Gershanovich, E.V. Markarov, and M.S. Chebanov. 1995. Sturgeon fisheries in Russia, pages 124–130, *in* Proceedings of the Second International Symposium on Sturgeons, September 6–11, 1993. Moscow-Kosyroma-Moscow. VNIRO Publication.

Birstein, V.J., W.E. Bemis, and J.R. Waldman. 1997. The threatened status of Acipenseriformes species: A summary. Environmental Biology of Fishes, 48:427.

CITES Secretariat. 2001. Sturgeons, significant trade and the ''Paris agreement'' *CITES World: Official Newsletter of the Parties,* 8:1–2.

DeMeulenaer, T., and C. Raymakers. 1996. Sturgeons of the Caspian Sea and the international trade in caviar. TRAFFIC International. 71 pp.

Edwards, D., and S. Doroshov. 1989. Appraisal of the sturgeon and seatrout fisheries and proposals for a rehabilitation programme. FAO Field Document I.TCP/TUR/8853. 38 pp.

Hensel, K. and J. Holcik. 1997. Past and current status of sturgeons in the upper and middle Danube River. Environmental Biology of Fishes. 48: 185–200.

IUCN. 2000. 2000 IUCN Red list of threatened animals. IUCN, Gland and Cambridge.

Ivanov, Vladimir Prokofievich. 2000. Biological Resources of the Caspian Sea. KaspNIRKH, Astrakhan. 96 pp.

Khodorevskaya, R.P. *et al.* 2000. Formation of the stock of the Caspian Acipenserids under present-day conditions. Journal of Ichthyology, 40(8): 602–609.

Levin, A.V. 1995. The distribution and migration of sturgeons in the Caspian Sea. *In: Proceedings of the Sturgeon Stocks and Caviar Trade Workshop.* Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, and the Federal Agency for Nature Conservation. Bonn, Germany.

Messier, M. 1998. The beluga sturgeon: caviar in danger? *In* TED Case Studies: *http://www.american.edu/projects/mandala/TED/STURGEON.HTM.*

Moiseev, A. 2002. Total allowable catch (TAC) estimation for sturgeon species in the Caspian Sea. Management Authority for Sturgeon of the Russian Federation. 19 pp.

Petrossian. 2002. *http://www.petrossian.com.*

Pirogovskii, M. I., L. I. Sokolov, and V. P. Vasilev. 1989. *Huso huso* (Linnaeus, 1758), pages 295–344, *in* Document Doc. 10.89; Prop. 10.65. 1997 Proposal to list all Acipenseriformes in Appendix II. Submitted by Germany and the United States of America.

Raspopov, V. M. 1993. Growth rate of Caspian Sea beluga. Journal of Ichthyology, 33(9) 72–84.

Secor, D.H., V. Arefjev, A. Nikolaev, and A. Sharov. 2000. Restoration of sturgeon: lessons from the Caspian Sea Sturgeon Ranching Programme. Fish and Fisheries, 1:215–230.

Speer, L., L. Lauck, E. Pikitch, S. Boa, L. Dropkin, V. Spruill. 2000. Roe to ruin: The decline of sturgeons in the Caspian Sea and the road to recovery. Natural Resources Defense Council, Wildlife Conservation Society, SeaWeb. 26 pp.

TRAFFIC/Europe. 1999. Estimation of the stock and population conditions of sturgeons in Russia and monitoring domestic trade in sturgeon products. TRAFFIC Europe-Russia field investigations. 18 pp.

Volkov, K. 2001. The Caviar Game Rules. Reuters-IUCN. 6 pp.

The primary author of this proposed rule is Marie T. Maltese, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750, Arlington, Virginia 22203; telephone, (703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17— [AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section § 17.11(h) is amended by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Sturgeon, beluga	*Huso huso*	Azerbaijan, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Islamic Republic of Iran, Kazakhstan, Republic of Moldova, Romania, Russian Federation, Turkey, Turkmenistan, Ukraine, Yugoslavia (Caspian Sea, Black Sea, Adriatic Sea, Sea of Azov and all rivers in their watersheds).	Entire	E	....	NA	NA

Dated: July 9, 2002.

Marshall P. Jones, Jr.,

Acting, Director, Fish and Wildlife Service.

[FR Doc. 02–19250 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 071602C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico; Secretarial Amendment 2; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on the Council's proposed Secretarial Amendment 2 to the Reef Fish Fishery Management Plan (Secretarial Amendment 2) to set greater amberjack Sustainable Fisheries Act (SFA) targets and thresholds and to set a rebuilding plan.

DATES: The public hearings will be held in August. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to and copies of the scoping document are available from the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619, telephone: (813) 228–2815.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The public hearings will be convened on Secretarial Amendment 2 to set greater amberjack SFA targets and thresholds and to set a rebuilding plan. The greater amberjack resource in the Gulf of Mexico was declared overfished by NMFS on February 9, 2001, and was based on the 2000 greater amberjack stock assessment. The results of several analyses indicated that the stock biomass was below the level needed to sustain harvest at maximum sustainable yield (MSY), with the best estimate indicating that the stock biomass was at less than half the biomass needed to sustain MSY, below the minimum level allowed under the 1998 NMFS National Standard Guidelines. However, NMFS concluded that overfishing is not currently occurring due to the recent implementation of management measures that were not reflected in the stock assessment. These measures included: (1) a reduction in the greater amberjack recreational bag limit from 3 to 1 fish (implemented 1997); (2) a commercial closed season during March, April and May (implemented 1998); and (3) partial protection of misidentified juvenile greater amberjack by establishment of a slot limit on lesser amberjack/banded rudderfish of 14 and 22 inches (35.6 and 55.9 cm) fork length plus an aggregate 5-fish recreational bag limit. As a result of this finding, additional measures to end overfishing are not needed, but a plan to rebuild the stock is needed.

Because NMFS has declared the stock overfished, the Council is required to rebuild the stock to a level where it is no longer considered overfished. Before a plan can be put into effect, management targets and thresholds that the stock needs to achieve must be defined. These are: definitions for MSY, optimum yield (OY), the minimum stock size threshold (MSST) below which a stock is considered to be overfished, the maximum fishing mortality threshold (MFMT) above which a stock is considered to be undergoing overfishing. The proposed amendment also provides alternative rebuilding plans that will rebuild the stock within 10 years or less and are based on various rebuilding strategies.

The public hearings will be held from 7 p.m. to 10 p.m. at the following locations and dates.

1. *Tuesday, August 6, 2002:* Texas A&M University, CLB Building Room 114, 200 Seawolf Parkway, Galveston, TX; telephone: 409–740–4736; and

2. *Wednesday, August 7, 2002:* City Hall Auditorium, 300 Municipal Drive, Madeira Beach, FL; telephone: 727–391–9951.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 30, 2002.

Dated: July 24, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–19362 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 147

Wednesday, July 31, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

2001 Crop Assistance for Losses in the State of Idaho Due to the Herbicide Oust

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this notice to inform all interested parties of the 2001 Idaho Oust Program (Oust Program). The program is to compensate farmers whose crops were damaged by the Bureau of Land Management's use of a herbicide near their farm.

DATES: All interested parties must file applications at the address specified below by such date as determined by the Idaho State Executive Director.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Telephone (202) 720–3463.

SUPPLEMENTARY INFORMATION: Section 757 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2002 (Public Law 107–76) provided that the Secretary of Agriculture may use not more than $5,000,000 of funds of the Commodity Credit Corporation to pay claims of crop damage, upon consultation with the Secretary of the Interior, that resulted from the Bureau of Land Management's use of herbicides during the 2001 calendar year in the State of Idaho. Section 757 provided further that if the amount provided was not sufficient to pay all approved claims then the claims would be reduced on a pro rata basis related to the degree of loss in production. And, Section 757 specified that nothing in it would be construed to constitute an admission of liability by the United States arising from the use by the Bureau of Land Management of the herbicide Oust. Also, it was provided that the issuance of regulations promulgated pursuant to Section 757 would be made without regard to: (1) The notice and comment provisions of section 553 of title 5, United States Code; (2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (3) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act''). Also, the Secretary was directed to use the authority provided under section 808 of title 5, United States Code which excepts certain rules from certain statutory provisions relating to Congressional oversight. This notice is to inform affected parties that they may be eligible for 2001 Oust benefits under the terms of this notice and to set forth the terms and conditions of the Oust Program.

Producers who seek benefits under this notice must file an application, CCC–559, 2001 Idaho Oust Program Application, for benefits in the county Farm Service Agency (FSA) office serving the county where the producer's farm is located for administrative purposes. The Secretary of Agriculture will spend $5 million of CCC funds to pay claims of crop damage under the Oust Program. Because funding for the program is limited to $5 million, national factors for reducing payments may be determined after the end of sign up, if necessary, to ensure that the total outlays do not exceed the amount of funds made available under this program. In the event that the $5 million is insufficient to pay all approved claims, the Secretary of Agriculture will reduce all approvable and timely claims on a pro rata basis related to the degree of loss in production. Total Oust benefits are not subject to a payment limitation per ''person'' as defined in 7 CFR part 1400, or the gross revenue provisions.

Any payment or portion thereof to any producer shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor. Eligible producers for Oust benefits are producers in the State of Idaho who have suffered 2001 crop year production losses in excess of 25 percent of a field's expected production as a result of BLM's use of the herbicide Oust. The 25 percent limit is not set out in the statute. However, the program is discretionary and claims above that amount are expected to exceed the $5 million allowed to be spent. The 25 percent restriction is intended to help direct the funds to those with the greatest loss and the greatest needed. Although the statute speaks generally, initially, of a herbicide loss, without specifying a particular herbicide, the statute makes it clear that it is directed at the herbicide Oust. By statute, the program is limited to Idaho. As specified in this statute, nothing in the administration of the program is designed to suggest or constitute, or can be taken to suggest or constitute, and admission of liability by the United States or anyone arising from the use of the herbicide Oust or any other herbicide. As a condition to receive Oust benefits, a producer must have been in compliance with the Highly Erodible Land and Wetland Conservation provisions of 7 CFR part 12 for the 2001 crop year.

No person shall receive Oust benefits in an amount that exceeds the value of the expected production for the field for the 2001 crop year as determined by CCC.

To receive Oust benefits, the county FSA committee must determine that because of BLM's use of Oust, the producer sustained a loss of the expected production of a crop on a farm field. Ineligible causes of loss are those that are not a direct result from BLM's use of Oust. Calculation of benefits under this notice shall not include ineligible causes of loss, such as losses that are the result of adverse weather conditions, poor management decisions or poor farming practices.

Each eligible producer's share of an Oust payment shall be based on the producer's share of the crop or crop proceeds, or, if no crop was produced, the share the producer would have received if the crop had been produced.

Oust payments will be calculated using payment rates and yields established under the 2000 Crop Disaster Program (CDP) as provided in 7 CFR part 1480.

Eligible acreage shall be calculated using the number of acres shown to have been planted to a crop in a farm field, excluding acreage enrolled in the 2001 Sugar Payment-In-Kind Diversion Program. Such land was land for which no crop was to be harvested in return for sugar from CCC's inventory. Accordingly, it would not be proper to consider such acres to have suffered a loss of the crop for purposes due to the application of this herbicide. Subject to the availability of funds, Oust benefits under this notice for losses to crops shall be made in an amount determined by multiplying the determined eligible loss of production in excess of 25 percent of the expected production for the field by the applicable payment rate.

Production shall include all harvested production, unharvested production and assigned production for the field. The county committee shall assign production when the county committee determines: (1) An acceptable appraisal or record of harvested production does not exist; (2) acreage was destroyed and no appraisal exists; (3) yields are diminished or losses are increased due to an ineligible cause of loss.

The county committee shall establish production factors for ineligible causes of loss. Production factors will apply when assigning production for ineligible causes of loss.

Producers are responsible for providing verifiable or reliable production records available for the crop and field and summarizing all the production evidence. If the eligible crop was sold or otherwise disposed of through commercial channels, production records include: commercial receipts; settlement sheets; warehouse ledger sheets; or load summaries; appraisal information from a loss adjuster acceptable to CCC. If the eligible crop was farm-stored, sold, fed to livestock or disposed of by means other than commercial channels, production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to CCC; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

Producers must provide all records for any production of a crop that is grown with an arrangement, or contract for guaranteed payment. The failure to report the existence of any guaranteed contract or similar arrangement or agreement shall be considered as providing false information to CCC and will render producers ineligible for Oust benefits, and may lead to other civil or criminal sanctions.

To receive Oust benefits, the county committee must determine that because of the herbicide Oust, the producer, with respect to the 2001 crop year, sustained a loss in production of a crop.

To determine if eligible acreage was damaged by Oust, the producer must supply one of the following types of documentation: (1) Field inspection form compiled by a licensed crop consultant; (2) documentation from an independent crop consultant that indicates Oust damage; (3) positive soil test results that show the presence of Oust in the sample; or (4) documentation from a University of Idaho Specialist that the acreage showed Oust damage.

To apply for benefits, producers must submit: (1) Form CCC–559, and include supporting documentation described in this notice; (2) Form AD–1026, Highly Erodible Land and Wetland Conservation Compliance; and (3) FSA–578, Report of Acreage.

Unless extended by CCC, the final date for accepting applications for the Oust Program shall be no less than 15 calendar days after the date this notice is published in the **Federal Register**. It has been determined that the notice and comment provisions of section 553 of title 5, United States Code, the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking, and chapters 35 of title 44, United States Code (the ''Paperwork Reduction Act'') are not applicable to the Oust Program. Also delay for Congressional review under 5 U.S.C. 808 *et seq.*, to the extent if any, that it would otherwise apply, would be contrary to the public interest and contrary to the provisions of section 757 of Public Law 107–76 which specifies that in carrying out that section the Secretary shall use the authority of 5 U.S.C. 808 exempting agency actions from such review. Applications may be obtained and filed in the county FSA office where the producer's farm is located for administrative purposes. All late and incomplete applications may be rejected.

The Oust Program shall be under the supervision of the Farm Service Agency, Deputy Administrator for Farm Programs, who shall have the authority to modify terms and conditions of the Oust Program in order to achieve the purposes of the Oust Program. Additional conditions may be added by the program application as needed. No claims will be paid except upon the making of a proper application during the sign-up period for this program. The final terms and conditions shall be those set out in the program application, CCC–559, which all participants must sign. A copy of this form is available at any FSA office.

For additional information, affected producers should contact the Farm Service Agency Service Center in the county in which their farm is located for administrative purposes. Eligibility determinations will be made upon receipt of all of the necessary data.

Signed at Washington, DC, on July 25, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–19260 Filed 7–30–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Flathead County Resource Advisory Committee will meet in Kalispell, Montana August 5 and August 20. The purpose of the meeting is to discuss potential Title II projects for fiscal year 2003 funded by the Secure Rural Schools and Community Self Determination Act.

DATES: The meetings will be held August 5 from 7 pm to 9:30 pm and August 20, 7 pm to 9:30 pm.

ADDRESSES: The meeting will be held at the Flathead National Forest Supervisors Office, Conference Rooms A & B, 1935 third Ave East, Kalispell, Montana, 59901.

FOR FURTHER INFORMATION CONTACT: Allen Rowley, Flathead National Forest Public Affairs Specialist, (406) 758–5252.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Time will be available for public input on potential projects the committee may be discussing.

Allen Rowley,

Public Affairs Specialist.

[FR Doc. 02–19286 Filed 7–30–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Payments Table Related to Secure Rural Schools and Community Self-Determination Act of 2000 and Opportunity for Counties To Change Payment Election Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Secure Rural Schools and Community Self-Determination Act of 2000 provides counties that receive payments under the 25 percent fund with the option of receiving their share of the State's full payment amount (as defined by the act), in lieu of the 25 percent fund payments. In 2000, the Forest Service provided a table displaying the dollar amounts for revenues distributed to each State by year and county. Counties used this table in making their election decisions for payments. As directed by the Agriculture Appropriations Act for Fiscal Year 2002, the Forest Service has revised this table, which incorrectly accounted for certain mineral revenues for some States. The agency submitted the revised table to Congress along with a report explaining the issues and the revision process. This notice provides information regarding the availability of the revised table and report, and notifies counties of the 90-day period during which they may change their payment elections.

DATES: Changes to county election decisions must be received in writing on or before October 29, 2002.

ADDRESSES: Counties wishing to change their payment election decisions should do so in writing to Michael Morton, USDA Forest Service, Financial Management Staff (Mail Stop 1139), 1400 Independence Avenue, SW., Washington, DC 20250–1139 (e-mail: *mpmorton@fs.fed.us;* facsimile: 703–605–5264). The revised payments table and accompanying report are available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/payments.* Single paper copies of the revised payments table and report also are available by contacting Tom Quinn, USDA Forest Service, Policy Analysis Staff (Mail Stop 1131), 1400 Independence Avenue, SW., Washington, DC 20250–1131 (e-mail: *tquinn01@fs.fed.us*).

FOR FURTHER INFORMATION CONTACT: Tom Quinn (202–205–0846) or Maitland Sharpe (202–205–0932), Policy Analysis Staff, or Michael Morton (703–605–4724), Financial Management Staff.

SUPPLEMENTARY INFORMATION: The Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) provides counties that received payments under the 25 Percent Fund Act of 1908 (16 U.S.C. 500) with the option of receiving their share of the State's full payment amount (as defined by the act), in lieu of the 25 percent fund payments. The Forest Service provided a table displaying each State's full payment amount and an associated county distribution in 2000 to Congress and affected counties. The table also was made available electronically on the agency's World Wide Web/Internet web site and other web sites. The counties used this table in making their election decisions regarding the option to receive their share of the State's full payment amount (as defined by the act) in lieu of the 25 percent fund payment.

Subsequently, it was determined that certain mineral revenues for some States were incorrectly accounted for in the table. Therefore, as directed by the Agriculture Appropriations Act for Fiscal Year 2002, the Forest Service has revised the payments table and prepared a report outlining the process used to revise the table consistent with the Congressional direction. The agency has submitted the revised payments table and accompanying report to Congress and has made the documents available electronically as set out in the **ADDRESSES** section of this notice.

Congress specified that if the revised table results in a reduced full payment amount share for an eligible county that elected to receive its share of the state's full payment amount, the eligible county shall have a 90-day period, beginning on the date the revised table is first made available to the public, during which to reconsider and change its election.

As directed by the Congress, the Forest Service has worked with the U.S. Department of the Interior, Minerals Management Service (MMS) to use the best available information to revise the payments table. The analysis resulted in changes in the payments table for 16 States: Alabama, Arkansas, Florida, Illinois, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, New Mexico, Ohio, Oklahoma, Texas, Virginia, and West Virginia. Although each of these 16 States is affected to varying degrees, the effects of the revisions are most evident on a state-wide basis for Arkansas, Kentucky, Louisiana, Ohio, Oklahoma, and Missouri; the latter being the only State with a large increase in the full payment amount. By far the largest decline in the full payment amount is for Arkansas, with a potential reduction of $1.003 million if all counties choose the full payment amount. For the first two years of Public Law 106–393 implementation, 14 of the 29 eligible counties in Arkansas elected the full payment amount; therefore the actual reduction for this period would be $651,600.

It is possible that States with substantial hard-rock revenues (such as Missouri) would no longer receive payments for these minerals from the MMS for the counties choosing the full payment amount, which could result in large reductions in the total payments received by these States. In the case of Missouri, if all counties choose the full payment amount, MMS payments could drop by upwards of $1 million annually. The decision on whether payments for hard-rock minerals will continue rests with the MMS and the Department of the Interior.

The revised table redistributes each State's full payment amount based on the National Forest location of the relevant minerals and the counties within those forests. In some States (for example, Michigan), this redistribution can result in significant effects on individual counties' payments even while the State's total full payment amount remains essentially unchanged.

Dated: July 24, 2002.

Sally D. Collins,

Associate Chief.

[FR Doc. 02–19281 Filed 7–30–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers Jinan Yipin Corporation, Ltd., and Shandong Heze International Trade and Developing Company. The period of review is November 1, 2000, through October 31, 2001.

We have preliminarily determined that Jinan Yipin Corporation, Ltd., has made sales in the United States at prices below normal value. With respect to Shandong Heze International Trade and Developing Company, we intend to rescind the antidumping duty new shipper review.We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Brian Ellman, Office of AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482–5047 and (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (April 2001).

Background

On January 7, 2002, the Department of Commerce (the Department) published in the **Federal Register** the *Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic From the People's Republic of China* (67 FR 715). The Department issued antidumping questionnaires to Jinan Yipin Corporation, Ltd. (Jinan Yipin), and Shandong Heze International Trade and Developing Company (Shandong Heze).[1]

During the period March through July 2002, the Department received responses to sections A, C, and D of the Department's original and supplemental questionnaires from Jinan Yipin and Shandong Heze.

On May 16, 2002, we requested publicly available information for valuing the factors of production and comments on surrogate-country selection. We received comments from the petitioners and Jinan Yipin on May 30, 2002. On July 15, 2002, and July 16, 2002, we completed a verification at Jinan Yipin's U.S. sales office. We intend to verify the factors-of-production information upon which we will rely in completing our final results of review.

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Separate Rates

In proceedings involving non-market-economy (NME) countries, the Department begins with a presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to its exports. In these reviews, both Jinan Yipin and Shandong Heze have requested separate company-specific rates.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586 - 22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See, *e.g.*, *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997), and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Jinan Yipin and Shandong Heze provided separate-rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to determine whether these exporters are independent from government control (see *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Jinan Yipin has placed on the record a number of documents to demonstrate absence of *de jure* control, including the ''Foreign Trade Law of the People's Republic of China'' and the ''Company Law of the People's Republic of China.'' The Department has analyzed these laws and found that they establish an absence of *de jure* control. See, *e.g.*, *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding

[1] A new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China was also initiated for Huaiyang Hongda Dehydrated Vegetable Company. We rescinded this new shipper review, however, for the November 1, 2000, through October 31, 2001, period of review and initiated a review for the period from November 1, 2001, through April 30, 2002 (see *Notice of Rescission of New Shipper Antidumping Duty Review and Initiation of Antidumping Duty New Shipper Review*, 67 FR 44594 (July 3, 2002)).

which would cause us to reconsider this determination.

Shandong Heze placed only one document on the record relevant to our analysis of *de jure* control, a copy of the ''Foreign Trade Law of the People's Republic of China.'' Also, Shandong Heze did not provide the Department with information to substantiate its business license, such as the regulated-commodities listings, as evidence of the lack of *de jure* government control. See *Shandong Heze International Trade and Developing Company-Separate Rates Analysis and Deficient Submissions Memorandum*, dated July 22, 2002. Therefore, we find that Shandong Heze did not demonstrate the absence of *de jure* control in this case.

2. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the People's Republic of China (PRC) central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide* at 22586 - 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

According to Jinan Yipin, it is a private limited-liability company owned by a group of private investors. Jinan Yipin has also asserted the following: (1) There is no government participation in setting export prices; (2) its managers have authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection; and (4) there are no restrictions on the use of its export revenue and it is responsible for financing its own losses. Furthermore, our analysis of Jinan Yipin's questionnaire responses reveals no other information indicating the existence of government control. Consequently, we preliminarily determine that Jinan Yipin has met the criteria for the application of a separate rate.

Although Shandong Heze has made statements that it no longer has a relationship with any level of the government in the PRC, Shandong Heze has not provided an adequate explanation to support its independence from government control. Therefore, we preliminarily determine that Shandong Heze has not met the criteria for the application of a separate rate.

Intent to Rescind in Part

The PRC is an NME, and in NME cases we presume that all entities are subject to government control for purposes of the antidumping law unless those entities prove affirmatively that they are free from *de jure* and *de facto* government control of their export activities. See *Sparklers* and *Silicon Carbide*. Without adequate documentation of this independence, we find that Shandong Heze is not entitled to a separate rate. Consequently, Shandong Heze's belated acknowledgement of its recent government ownership and its failure to document its independence from the government adequately does not support its contention that it is a new shipper and that it is not part of the PRC-wide entity. As such, we intend to rescind the review of Shandong Heze.

Fair Value Comparisons

To determine whether sales of fresh garlic to the United States by Jinan Yipin were made at less than fair value, we compared constructed export price to normal value, as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice below.

Constructed Export Price

In accordance with section 772(b) of the Act, we used constructed export price (CEP) methodology because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. We calculated CEP based on prices from Jinan Yipin's U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the gross unit price to account for foreign inland freight, international freight, customs duties, and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight, were provided by NME companies, we valued those charges based on surrogate rates from India. See the *Factors Valuation for the Preliminary Results of the New Shipper Review Memorandum*, dated July 24, 2002 (*FOP Memorandum*).

Normal Value

1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV), in most circumstances, on the NME producer's factors of production valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Factor Valuations'' section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See Memorandum from Jeffrey May to Laurie Parkhill, dated February 28, 2002. In addition to being among the countries comparable to the PRC in economic development, India is a significant producer of the subject merchandise. We used India as the surrogate country and, accordingly, have calculated NV using Indian prices to value the PRC producer's factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. See Memorandum from Jason Carver to Mark Ross regarding Selection of a Surrogate Country, dated July 24, 2002. In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of a new shipper review, interested parties may submit publicly available information to value the factors of production within 20 days after the date of publication of these preliminary results of new shipper review.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country and (2) the information does not permit the calculation of NV using home-market prices, third- country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used factors of production reported by the respondent for materials, energy, labor, and packing. We valued all the input factors using publicly available information, as discussed in the ''Surrogate Country'' and ''Factor Valuations'' sections of this notice. In accordance with 19 CFR 351.408(c)(1), where a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. See also *Lasko Metal Products v. United States*, 437 F.3d 1442, 1445–1446 (CAFC 1994). Therefore, where Jinan Yipin had market-economy inputs and paid for these inputs in a market-economy currency, we used the actual prices paid for those inputs in our calculations.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by the respondent for the period of review (POR). To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for respondents. See the *FOP Memorandum*.

We added to Indian import surrogate values a surrogate freight cost using the reported distance from the domestic supplier to the factory. This adjustment is in accordance with the decision in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (CAFC 1997).

For those Indian rupee values not contemporaneous with the POR, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics* for India. For those U.S. dollar-denominated values not contemporaneous with the POR, we adjusted for inflation using producer price indices published on the Federal Reserve Bank website (*www.dallasfed.org/htm/data/data/wsop03sa.tab.htm*).

Except as noted below, we valued raw-material inputs using the weighted-average unit import values derived from the *Monthly Trade Statistics of Foreign Trade of India*--Volume II--Imports (Indian Import Statistics) for the time period April 2001 through September 2001. Where POR-specific Indian Import Statistics were not available, we used Indian Import Statistics from an earlier period (*i.e.*, April 2001 through June 2001). Surrogate-value data or sources to obtain such data were obtained from the respondent, the petitioners, and Department research.

Furthermore, we valued water based on data from the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* (published in 1997). We valued electricity based on data from the *International Energy Agency: Energy Prices & Taxes: 2000 1st Quarter*. We valued diesel fuel using data from the International Energy Agency for the time period January 2000 through April 2000.

The inputs Jinan Yipin reported for packing were mesh bags, cartons, and packing belts. We used Indian Import Statistics data for the April 2001 through September 2001 period to value these inputs.

To value truck rates, we used freight costs from the February 14, 2000, publication of.

To value factory overhead, selling, general and administrative expenses, and profit, we used rates based on financial information from the 1999–2000 annual reports of Himalaya International Ltd., Flex Foods, and Agro Dutch, Indian producers of preserved mushrooms. We based the value of the garlic sprouts on the building depreciation in the aforementioned financial information.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate at the Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2000 (see http://ia.ita.doc.gov/wages). The source of the wage-rate data on the Import Administration's web site is the 1999 *Yearbook of Labour Statistics*, International Labor Organization (Geneva: 1999), Chapter 5B: Wages in Manufacturing.

Preliminary Results of the Review

We preliminarily determine that the following dumping margin exists for the period November 1, 2000, through October 31, 2001:

Manufacturer and Exporter	Weighted-average percentage margin
Jinan Yipin Corporation, Limited	15.26

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs regarding our intent to rescind the review of Shandong Heze must be submitted within 15 days of the date of publication of this notice. Case briefs regarding Jinan Yipin must be submitted no later than seven days after the issuance of the last verification report. Rebuttal briefs, limited to issues raised in the case briefs, must be filed within five days after the deadline for submission of case briefs. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument with an electronic version included, and 3) a table of authorities.

Pursuant to 19 CFR 351.310 of the Department's regulations, any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice or the first workday thereafter. In accordance with 19 CFR 351.309(c)(ii), issues raised in hearings will be limited to those raised in the case and rebuttal briefs.

The Department will publish the final results of this new shipper review, including the results of its analysis of issues raised in any such written briefs, within 90 days of publication of these preliminary results. See 19 CFR 351.214(i)(1) of the Department's regulations.

Assessment Rates

Upon completion of this new shipper review, the Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews. To calculate the amount of duties to be assessed with respect to CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of this new shipper review, we will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for subject merchandise manufactured and exported by Jinan Yipin, the cash-deposit will be that established in the final results of this review except if the rate is less than .50 percent and therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash-deposit rate will be zero; (2) for all other PRC exporters, including Shandong Heze, the rate will continue to be the PRC country-wide rate, which is 376.67 percent; and (3) for all other non-PRC exporters of subject merchandise from the PRC, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July, 24, 2002

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–19342 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from a domestic interested party, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from Japan for the period February 1, 2001, through January 31, 2002. This review covers one producer/exporter of subject merchandise, Aichi Steel Works, Ltd.

We have preliminarily determined a dumping margin in this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on any entries of subject merchandise manufactured or exported by Aichi Steel Works, Ltd.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Ellman, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4852.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 2001).

Background

On February 1, 2002, the Department published a notice of ''Opportunity to Request Administrative Review'' (67 FR 4945) with respect to the antidumping duty order on stainless steel bar from Japan. The petitioners, Carpenter Technology, Crucible Specialty, Electralloy, and Slater Steels, requested a review of Aichi Steel Works, Ltd. (Aichi) on February 27, 2002. In response to the petitioners' request, the Department published a notice of initiation of an administrative review on March 27, 2002 (67 FR 14696), in accordance with 19 CFR 351.213(b).

Scope of Order

The merchandise covered by this review is stainless steel bar. For purposes of this review, the term ''stainless steel bar'' means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross-section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.*, cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (i.e., cold-formed products in coils, of any uniform solid cross-section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00, 7222.19.00, 7222.20.00 and 7222.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Period of Review

The period of review is February 1, 2001, to January 31, 2002.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party 1) withholds information that has been requested by the Department, 2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, 3) significantly impedes a determination under the antidumping statute, or 4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in determining dumping margins.

The Department sent Aichi a questionnaire on April 4, 2002, with a due date of May 13, 2002, seeking information necessary to conduct a review of any shipments that the firm may have made to the United States during the period of review. Aichi did not respond to our original questionnaire, nor did it make any effort to inform the Department of its intention not to respond. On May 15, 2002, two days after the deadline for responding to the Department's questionnaire, the Department contacted counsel for Aichi, and received a return phone message five days later, on May 20, 2002, in which counsel for Aichi indicated that the company would not be responding to the Department's questionnaire in this segment of the proceeding. *See* Memorandum regarding Notification of Respondent's Decision Not to Respond to Department's Questionnaire: Stainless Steel Bar from Japan (May 21, 2002). The company did not notify the Department of any difficulties in complying with the request for information, nor did it seek an opportunity to submit information in alternative forms with an appropriate explanation. Therefore, Aichi failed to comply with the provisions of section 782(c) of the Act. Because Aichi has withheld information that was requested by the Department, and has failed to provide any information whatsoever, the statute directs that we determine Aichi's dumping margin using facts otherwise available, pursuant to sections 776(a)(2)(A) and (B) of the Act. Because Aichi has provided no information whatsoever, sections 782(d) and (e) of the Act are inapplicable.

In selecting from the facts otherwise available, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. The section also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record. *See* sections 776(b)(1)-(4) of the Act. In addition, the Statement of Administrative Action accompanying the URAA, H.Doc.103–316, vol.1 (1994) (SAA), establishes that the Department may employ an adverse inference ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' SAA at 870. As noted above, Aichi not only failed to respond to the Department's questionnaire, it took no affirmative steps to inform the Department of its intention not to participate until the Department contacted its counsel. Moreover, Aichi did not inform the Department of any difficulties in meeting requirements, nor did it seek to submit data in alternative forms with an appropriate explanation. On these grounds, the Department finds that Aichi failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, and accordingly, pursuant to section 776(b), we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8932 (February 23, 1998). In employing adverse inferences, the Department is instructed to consider ''the extent to which a party may benefit from its own lack of cooperation.'' SAA at 870.

In order to ensure that the rate is sufficiently adverse so as to induce Aichi's cooperation, we have assigned this company as adverse facts available a rate of 61.47 percent, which is the margin calculated in the original less-than fair-value (LTFV) investigation using information provided in the petition. *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Bar From Japan*, 59 FR 66930 (December 28, 1994). The rate was selected as the best information available in the final determination of the investigation, and has been applied as the ''all-others'' rate in every subsequent review. Although two other rates have been calculated for Aichi in prior segments of this proceeding, those rates were calculated based on Aichi's cooperation. To apply one of those rates as the adverse facts available rate would unduly reward Aichi's lack of cooperation in the current review. Therefore, pursuant to section 776(b)(1), the Department finds that the rate of 61.47 percent is an appropriate basis for adverse inference.

Section 776(c) of the Act provides that the Department when using secondary information shall, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Information from a prior segment of the proceeding, such as that used here, constitutes secondary information. *See* SAA at 870. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

To assess the reliability of the petition margin, in accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the calculations of export price and normal value upon which the petitioners based their margins for the petition. The U.S. prices in the petition were based on quotes to U.S. customers, most of which were obtained through market research. *See Petition for the Imposition of Antidumping Duties*, December 30, 1993. We were able to corroborate the U.S. prices in the petition by comparing these prices to publicly available information based on IM–145 import statistics covering sales from Japan which were contemporaneous with the period of this administrative review. See Memorandum from Brian Ellman, Case Analyst to the File, Corroboration of Petition Rate for Use as Facts Available, July 8, 2002.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (the Department disregarded the highest dumping margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). There is no evidence of circumstances indicating that the margin used as facts available in this review is not appropriate.

Throughout the history of this proceeding, all producers/exporters of subject merchandise except Aichi have been subject to the rate of 61.47 percent for several years. Aichi was also subject to this rate as a result of the investigation. As this rate has never before been challenged, except by Aichi in previous segments, nor has any information been presented in the current review that calls into question the reliability or the relevance of the information contained in the petition, the Department finds that the information is reliable. The implementing regulation for section 776 of the Act, codified at 19 CFR 351.308(d), states, ''{t}he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.'' Additionally, the SAA at 870 states specifically that ''{t}he fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.'' The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition and in accordance with 776(c) of the Act, which discusses facts available and corroboration, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination (*see Certain Forged Stainless Steel Flanges From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 10358, 10360 (March 7, 2002)). Therefore, the requirements of section 776(c) of the Act are satisfied.

Preliminary Results of the Review

As a result of this review, the Department preliminarily determines that a margin of 61.47 percent exists for Aichi for the period February 1, 2001, to January 31, 2002.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The rate will be assessed uniformly on all entries of Aichi merchandise made during the period of review. The Department will issue appraisement instructions for Aichi merchandise directly to the Customs Service.

Furthermore, the following deposit rates will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for Aichi will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 61.47 percent, the ''all others'' rate established in the LTFV investigation (59 FR 66930, December 28, 1994). This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 23, 2002.

Bernard Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 02–19341 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Riverside; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–021. *Applicant:* University of California, Riverside, Riverside, CA 92521. *Instrument:* Two (2) Confocal Microscopes, Models TCS SP2/UV and TCS SPS RS–2P. *Manufacturer:* Leica Microsystems, Germany. *Intended Use:* See notice at 67 FR 44424, July 2, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) A confocal microscope with spectral detection, (2) a pinhole design for registration of all fluorescence colors and (3) fast scan speed. The National Institutes of Health advises in its memorandum of June 12, 2002 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–19340 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the Federative Republic of Brazil

July 24, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 363 is being increased for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 57426, published on November 15, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 31, 2002, you are directed to increase the current limit for Category 363 to 45,048,558 numbers [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

[FR Doc. 02–19297 Filed 7–30–02; 8:45 a.m.

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2001.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Macau

July 25, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, carryover, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63028, published on December 4, 2001.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 31, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
225	7,187,336 square meters.
317	4,810,939 square meters.
333/334/335	487,250 dozen of which not more than 240,235 dozen shall be in Categories 333/335.
336	113,096 dozen.
338	598,612 dozen.
339	2,404,993 dozen.
340	624,831 dozen.
341	403,003 dozen.
342	165,319 dozen.
345	99,321 dozen.
347/348	1,394,617 dozen.
351	132,182 dozen.
359–C/659–C [2]	729,271 kilograms.
359–V [3]	243,092 kilograms.
625/626/627/628/629	7,637,880 square meters.
633/634/635	1,085,898 dozen.
638/639	3,356,306 dozen.
640	240,429 dozen.
641	288,892 dozen.
642	235,661 dozen.
645/646	530,156 dozen.
647/648	1,050,852 dozen.
659–S [4]	243,092 kilograms.

Category	Adjusted twelve-month limit [1]
Group II	
400–414, 433–438, 440–448, 459pt. [5] and 469pt. [6], as a group	1,749,056 square meters equivalent.
Sublevel in Group II	
445/446	97,938 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, and 6211.12.1020.

[5] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–19298 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man–Made Fiber Textiles and Textile Products Produced or Manufactured in the United Arab Emirates

July 24, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63038, published on December 4, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 2002.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textiles and textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on July 31, 2002, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
219	2,038,019 square meters.
226/313	3,485,061 square meters.
317	55,428,669 square meters.
326	3,467,736 square meters.
334/634	415,342 dozen.
338/339	991,950 dozen of which not more than 583,961 dozen shall be in Categories 338–S/339–S [2].
340/640	636,859 dozen.
347/348	733,200 dozen of which not more than 384,999 dozen shall be in Categories 347–T/348–T [3].
363	10,092,561 numbers.
369–O [4]	133,984 kilograms.
369–S [5]	152,653 kilograms.
638/639	394,925 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–19296 Filed 7–30–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 30, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 24, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–85 DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files (January 27, 1999, 64 FR 4075).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ‘Army Substance Abuse Program’.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ‘Active Army, Army National Guard of the U.S., Army National Guard, U.S. Army Reserve, Army civilian employees, military and civilian employee family members and military retirees who are screened and/or enrolled in the Army Substance Abuse Program.’

* * * * *

RETENTION AND DISPOSAL:

Add to entry ‘Personnel Reliability Program (PRP) records are maintained no longer than 6 years after individual is separated from PRP, then destroyed.’

* * * * *

A0600–85 DAPE

SYSTEM NAME:

Army Substance Abuse Program.

SYSTEM LOCATION:

PRIMARY LOCATION:

Army Substance Abuse Program (ASAP) rehabilitation/counseling facilities (e.g., Community Counseling Center/ASAP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army’s compilation of record system notices.

SECONDARY LOCATION:

Army Center for Substance Abuse Program, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Army, Army National Guard of the U.S., Army National Guard, U.S. Army Reserve, Army civilian employees, military and civilian employee family members and military retirees who are screened and/or enrolled in the Army Substance Abuse Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

PRIMARY LOCATION:

Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient’s behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, Patient Intake/Screening record-PIR (DA Form 4465–R); Patient Progress Report-PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document-Drug Testing (DD Form 2624), and similar or related documents.

SECONDARY LOCATION:

Copies of Patient Intake/Screening record-PIR (DA Form 4465–R); Patient Progress Report-PPR (DA Form 4466–R); Resource and Performance Report (DA Form 3711–R); and Specimen Custody Document-Drug Testing (DD Form 2624), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 290dd–2; Federal Drug Free Workplace Act of 1988; Army Regulation 600–85, Army Substance Abuse Program; and E.O. 9397 (SSN).

PURPOSE(S):

To identify alcohol and drug abusers within the Army; to treat, counsel, and rehabilitate individuals who participate in the Army Substance Abuse Program; to judge the magnitude of drug and alcohol abuse in the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ‘Blanket Routine Uses’ set forth at the beginning of the Army’s compilation of systems of records notices do not apply to this system.

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

INFORMATION IS DISCLOSED ONLY TO THE FOLLOWING PERSONS/AGENCIES:

To health care components of the Department of Veterans Affairs furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked metal containers; computer database; computer magnetic discs/tapes.

RETRIEVABILITY:

By patient's surname, Social Security Number or other individually identifying characteristics.

SAFEGUARDS:

Records are maintained in storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

PRIMARY LOCATION:

Records are destroyed 5 years after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

SECONDARY LOCATION:

Manual records are retained up to 18 months or until information taken there from and entered into computer records is transferred to the 'history' file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

Personnel Reliability Program (PRP) records are maintained no longer than 6 years after individual is separated from PRP, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20320–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/ medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351 HSC–AHS

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records (February 15, 2002, 67 FR 7140).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with A0351 DASG'.

* * * * *

A0351 DASG

SYSTEM NAME:

U.S. Army Medical Department School and Academy of Health Sciences Academic Records.

SYSTEM LOCATION:

U.S. Army Medical Department Center and School, Academy of Health Sciences, Department of Academic Support, 2250 Stanley Road, Fort Sam Houston, TX 78234–6100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident and correspondence students enrolled in courses at the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student's name, Social Security Number, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/ proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 351–3, Professional Education and Training Programs of the Army Medical Department; and E.O. 9397 (SSN).

PURPOSE(S):

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may be prerequisite for other formal courses of instruction, licensure, certification, and employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT, THESE RECORDS OR INFORMATION CONTAINED THEREIN MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:

Information may be disclosed to civilian medical institutions for the purpose of accrediting the individual's training and instruction.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Access to all records is restricted to designated individuals whose official duties dictate the need therefore.

RETENTION AND DISPOSAL:

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file, automated data are erased after the fourth updating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Registrar, Academy of Health Sciences, 2250 Stanley Road, Fort Sam Houston, TX 78234–6000.

For verification purposes, individual should provide the full name, Social Security Number, date attended/enrolled, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Academy of Health Sciences' staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–19256 Filed 7–30–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 30, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Guidance to SEAs Seeking to Use an Alternative Method to Distribute Title I Funds to LEAs with Fewer Than 20,000 Total Residents.

Frequency: Guidance issued on as needed basis.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 25.

Burden Hours: 200.

Abstract: Guidance for State educational agencies (SEAs) seeking to use an alternative method to distribute Title I Basic and Concentration Grants to local educational agencies (LEAs).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2118. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19336 Filed 7–30–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 30, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Guidance to SEAs on Procedures for Adjusting ED-determined Title I Allocations to Local Educational Agencies (LEAs).

Frequency: Guidance issued on as needed basis.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 2,080.

Abstract: Guidance for State educational agencies (SEAs) on procedures for adjusting ED-determined Title I Basic and Concentration Grants allocations to local educational agencies (LEAs) to account for newly created LEAs and LEA boundary changes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2119. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19337 Filed 7–30–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 30, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: National College Alcohol, Drug and Violence Survey.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 50,000.

Burden Hours: 30,000.

Abstract: The National College Alcohol, Drug and Violence Survey is being conducted as a national probability sample in order for the Department to obtain national statistics on alcohol and other drug use and violence among students at institutions of higher education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2088. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivian.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19338 Filed 7–30–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–407–000]

Gulf South Pipeline Company, LP; Notice of Application

July 25, 2002.

Take notice that on July 16, 2002, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway Plaza, Houston, Texas, 77046, filed an application for a certificate of public convenience and necessity and related authorizations pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations thereunder. Gulf South requests authorization to increase the maximum operating pressure in the Mobile Bay Lateral, located in Mobile County, Alabama. Copies of this application are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (please call (202) 208–2222 for assistance).

Any questions regarding Gulf South's application should be directed to J. Kyle Stevens, Esq., Director of Certificates, Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas, 77046 at (713) 544–7309 or by fax (713) 544–4818 or Michael E. McMahon, Esq., Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Houston, Texas, 77046 at (713) 544–4796 or by fax (713) 544–7336 or J. Curtis Moffat, Esq., Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, Washington, DC, 20007 at (202) 298–1885 or by fax (202) 338–2416.

Gulf South requests authorization to increase the maximum operating pressure from 892 to 976 psig in the 30-in Mobile Bay Lateral, beginning at the Tailgate of ExxonMobil Company's Mary Anne processing plant and extending north to Gulf South's Lirette-Mobile pipeline. Gulf South states that this increase in operating pressure would result in an increase to the capacity of this pipeline by 236 MMcf/day without the expenditure of capital or the disruption of the environment as there is no construction. Gulf Stream also states that this increase in pressure will give them added flexibility while allowing them to meet the needs of current and new customers without the cost of constructing new facilities.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 15, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19304 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–109–000]

Sacramento Municipal Utility District, Complainant v. Duke Energy Trading and Marketing, LLC, Respondent; Notice of Complaint

July 25, 2002.

Take notice that on July 24, 2002, Sacramento Municipal Utility District (SMUD) tendered for filing a Complaint Seeking Rate Relief Pursuant to Section 206 of the Federal Power Act (Complaint) against Duke Energy Trading and Marketing, LLC (DETM). The Complaint alleges that the prices charged by DETM under certain intermediate and long-term power contracts with SMUD are unjust and unreasonable and contrary to the public interest.

SMUD requests that the Commission set a refund effective date of 60 days from the date of filing of their complaint.

Copies of the filing were served upon DETM and the California Public Utilities Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before August 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before August 13, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19305 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–95–000, et al.]

Astoria Generating Company, L.P., et al.; Electric Rate and Corporate Regulation Filings

July 25, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Astoria Generating Company, L.P.; Carr Street Generating Station, L.P.; Erie Boulevard Hydropower, L.P.; Orion Power MidWest, L.P.; Twelvepole Creek, LLC

[Docket No. EC02–95–000]

Take notice that on July 19, 2002, Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Orion Power MidWest, L.P., and Twelvepole Creek, LLC (collectively, the Applicants), submitted an application pursuant to Section 203 of the Federal Power Act, seeking authorization for a proposed internal corporate reorganization that would result in the transfer of indirect control of Applicants and their jurisdictional facilities, and requesting expedited consideration of their Application and certain waivers.

The Applicants state that, as a result of a restructured financing arrangement of one of Applicants' parent companies, there will be a transfer of indirect control of Applicants' jurisdictional facilities. The Applicants further state that the proposed transaction will have no effect on competition, rates or regulation and is in the public interest.

Comment Date: August 16, 2002.

2. Ameren Services Company, on behalf of the Public Utility Company Subsidiaries of Ameren Corporation, Central Illinois Light Company, and Medina Valley Cogen, L.L.C.

[Docket No. EC02–96–000]

Take notice that on July 19, 2002 Ameren Services Company on behalf of the public utilities owned wholly or partially by Ameren Corporation (Ameren Corp.), Central Illinois Light Company (CILCO), an unaffiliated public utility, and AES Medina Valley Cogen, L.L.C. (Medina), an exempt wholesale generator affiliated with CILCO, tendered for filing with the Federal Energy Regulatory Commission (Commission), a joint application pursuant to section 203 of the Federal Power Act (Act), 16 U.S.C. 824b (2000), and part 33 of the Commission's regulations, 18 CFR part 33, to request the Commission to authorize Ameren Corporation to acquire CILCO and Medina (collectively, Applicants). Ameren will acquire from AES all of the issued and outstanding shares of common stock of CILCORP, the parent company of CILCO and all of the issued and outstanding units of the membership interest in AES Medina Valley Cogen (No. 4), L.L.C., which is the parent company of Medina Valley Cogen (No. 2), L.L.C. and which, in turn, is the parent company of AES Medina Valley Cogen, L.L.C. AES Medina Valley Cogen (No. 4), L.L.C. is also the parent company of AES Medina Valley Operations, L.L.C. After the Transaction closes, all of these entities will continue to exist as separate companies.

Applicants state that they have served the application on all required parties.

Comment Date: September 17, 2002.

3. San Diego Gas & Electric Company

[Docket No. ER02–1557–000]

Take notice that on July 22, 2002 San Diego Gas & Electric Company (SDG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission), Amendment No. 1 to Service Agreement No. 3 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6.

The Amendment No. 1, incorporates a change to the rate of the Operating & Maintenance (O&M) charges to be paid by RAMCO Chula Vista to SDG&E. The change in O&M rate was approved by the Commission in a letter order dated June 11, 2002.

SDG&E states in its filing that copies of the Amendment No. 1 have been served on RAMCO, Inc.

Comment Date: August 12, 2002.

4. Central Power and Light Company

[Docket No. ER02–2346–000]

Take notice that on July 22, 2002, Central Power and Light Company (CPL) submitted for filing the Interconnection Agreement, dated February 1, 2002, between CPL and Pedernales Electric Cooperative, Inc. (Pedernales) amended to include two new points of interconnection to be established between the parties at Pedernales' Rocksprings Substation.

CPL seeks an effective date of November 1, 2002 for the Interconnection Agreement.

CPL served copies of the filing on Pedernales and the Public Utility Commission of Texas.

Comment Date: August 12, 2002.

5. American Electric Power Service Corporation

[Docket No. ER02–2347–000]

Take notice that on July 22, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Ohio Power Company and Biomass Energy, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of September 17, 2002.

A copy of the filing was served upon Biomass Energy, LLC and the Public Utilities Commission of Ohio.

Comment Date: August 12, 2002.

6. Cleco Power LLC

[Docket No. ER02–2348–000]

Take notice that on July 22, 2002, Cleco Power LLC, tendered for filing a revised market-based rates tariff under Cleco Power LLC, FERC Electric Tariff, First Revised Volume No. 2, Superceding Cleco Power LLC, FERC Electric Tariff, Original Volume No. 2.

Comment Date: August 12, 2002.

7. Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–2349–000]

Take notice that on July 22, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power), filed an Interconnection Agreement (Agreement) with Backbone Mountain Windpower, LLC as Service Agreement No. 394 under Allegheny Power's Open Access Transmission Tariff.

Allegheny Power requests an effective date for the Agreement of September 20, 2002.

Comment Date: August 12, 2002.

8. NorthWestern Energy

[Docket No. ER02–2350–000]

Take notice that on July 22, 2002, NorthWestern Energy (NWE, formally The Montana Power Company) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.13, an executed Firm and Non-Firm Point-To-Point Transmission Service Agreement with Morgan Stanley Capital Group, Inc. (Morgan Stanley) under NWE's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Morgan Stanley.

Comment Date: August 12, 2002.

9. Westar Energy, Inc.

[Docket ER02–2351–000]

Take notice that on July 22, 2002, Westar Energy (WE) (formerly known as Kansas Gas & Electric Company) submitted for filing a Notice of Cancellation for Service Agreement No. 149, effective under WE's FERC Rate Schedule between WE and the City of Coffeyville, Kansas.

WE requests an effective date of October 1, 2002 for the cancellation of Service Agreement No. 149.

Copies of this filing were served on City of Coffeyville, Kansas and the Kansas Corporation Commission.

Comment Date: August 12, 2002.

10. Consumers Energy Company

[Docket No. ER02–2352–000]

Take notice that on July 22, 2002, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for unbundled wholesale power service with UtiliCorp Power Services (now known as Aquila, Inc. d/b/a Aquila Networks) pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the service agreement.

Comment Date: August 12, 2002.

11. Consumers Energy Company

[Docket No. ER02–2353–000]

Take notice that on July 22, 2002, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for unbundled wholesale power service with TransAlta Energy Marketing (U.S.) Inc. pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

Copies of the filing have been served on the Michigan Public Service Commission and the customers under the service agreement.

Comment Date: August 12, 2002.

12. Southern California Edison Company

[Docket No. ER02–2354–000]

Take notice that on July 22, 2002, Southern California Edison Company (SCE) tenders for filing revised rate sheets (Revised Sheets) to the Service Agreement and Interconnection Facilities Agreement between SCE and the City of Colton, under the Wholesale Distribution Access Tariff, FERC Electric Tariff, Original Volume No. 5. The Revised Sheets reflect the one-year extension of the services agreed to.

SCE respectfully requests the Commission to assign an effective date of July 23, 2002 to the Agreements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: August 12, 2002.

13. SES Ltd. Co.

[Docket No. ER02–2356–000]

Take notice that on July 22, 2002, SES Ltd. Co. (SES) tendered a filing with the Federal Energy Regulatory Commission (Commission) a petition for acceptance of SES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

SES intends to engage in wholesale electric power and energy purchases and sales as a marketer. SES is not in the business of generating or transmitting electric power. SES is a minority owned LLC whose principles have numerous years of energy experience including power marketing, natural gas origination and derivative trading.

Comment Date: August 12, 2002.

14. Central Power and Light Company; West Texas Utilities Company

[Docket No. ER02–2357–000]

Take notice that on July 22, 2002, American Electric Power Service Corporation (AEPSC), acting as agent for Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) submitted for filing an Interconnection Agreement, dated July 5, 2002, between CPL and Comisión Federal de Electricidad (CFE) and an Interconnection Agreement, dated July 5, 2002 between WTU and CFE.

CPL and WTU seek an effective date of July 5, 2002 for these interconnection agreements.

Comment Date: August 12, 2002.

15. Visteon Systems, LLC

[Docket No. ER02–2358–000]

Take notice that on July 22, 2002, Visteon Systems, LLC has tendered for filing with the Federal Energy Regulatory Commission (Commission) an Application for Order Granting Market-Based Rate Authority and FERC Electric Service Tariff, Visteon Systems, LLC FERC Electric Rate Schedule No. 1. Visteon Systems, LLC owns 10 MW of generating capacity for which it proposes to make sales at market-based rates of energy capacity and ancillary services.

Comment Date: August 12, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19308 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–2905–001, et al.]

Xcel Energy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 24, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Xcel Energy Services, Inc.

[Docket No. ER01–2905–001]

Take notice that on July 15, 2002, Xcel Energy Services, Inc. (Xcel) tendered for filing with the Federal Energy Regulatory Commission (Commission), a response to the letter issued by the Commission in the captioned docket on June 14, 2002.

Comment Date: August 5, 2002.

2. PECO Energy Company

[Docket No. ER02–2341–000]

Take notice that on July 18, 2002 PECO Energy Company (PECO) submitted for filing an Interconnection Agreement by and between PECO and Visteon Corporation (Visteon) for Generation Interconnection and Parallel Operation, designated as Service Agreement No. 703 under PJM Interconnection, L.L.C.'s FERC Electric Tariff, Fourth Revised Volume No. 1, to be effective on July 1, 2002. Copies of this filing were served on Visteon and PJM.

Comment Date: August 8, 2002.

3. PPL Montana, LLC

[Docket No. ER02–2342–000]

Take notice that on July 19, 2002, PPL Montana, LLC (PPL Montana) filed notices of termination of the Colstrip Unit Number 3 Wholesale Transition Service Agreement between PPL Montana and The Montana Power Company (now NorthWestern Energy, L.L.C.), designated as Rate Schedule FERC No. 1, and the Non Colstrip Unit Number 3 Wholesale Transition Service Agreement between PPL Montana and The Montana Power Company (now NorthWestern Energy, L.L.C.), designated as Rate Schedule FERC No. 2. Both rate schedules terminated by their own terms.

Notices of the termination have been served upon NorthWestern Energy, L.L.C.

Comment Date: August 9, 2002.

4. California Independent System Operator Corporation

[Docket No. ER02–2343–000]

Take notice that on July 19, 2002, the California Independent System Operator Corporation (ISO), tendered for filing a notice of termination of the Restated Interim Agreement (RIA) among the ISO, Sacramento Municipal Utility District (SMUD), and Pacific Gas and Electric Company (PG&E), for acceptance by the Federal Energy Regulatory Commission (Commission). The ISO requests that the termination of the RIA be made effective as of June 13, 2002, the date SMUD became a Control Area operator, as specified in Section 2.1(2) of the RIA.

The ISO states that this filing has been served on SMUD, PG&E, the Public Utilities Commission of the State of California, and the persons listed on the service list for Docket No. ER00–3278–000.

Comment Date: August 9, 2002.

5. Southern California Edison Company

[Docket No. ER02–2344–000]

Take notice that on July 19, 2002, Southern California Edison Company (SCE) tendered for filing revised sheets, and a letter agreement as added sheets to the Amended & Restated Eldorado System Operating Agreement (Agreement) between SCE and Nevada Power Company (NPC), Salt River Project Agricultural Improvement and Power District (SRP), and the Department of Water and Power of the City of Los Angeles (LADWP).

The purpose of the revised sheets is to correct a minor typographical error. The purpose of the letter agreement is to supplement the terms relating to Capital Improvements as set forth in Section 17 of the Agreement, under which 500 kV circuit breakers in the Eldorado Substation will be either replaced or upgraded. Further, the letter agreement provides the terms for either replacing or upgrading SCE's 500 kV series capacitors at the Eldorado Substation. Copies of this filing were served upon the Public Utilities Commission of the State of California, NPC, SRP, and LADWP.

Comment Date: August 9, 2002.

6. PJM Interconnection, L.L.C.

[Docket No. ER02–2345–000]

Take notice that on July 19, 2002, PJM Interconnection, L.L.C. (PJM), submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff to include the annual and monthly revenue requirements for Reactive Supply and Voltage Control from Generation Sources Service for Bethlehem Steel Corporation (Bethlehem) approved by the Commission in Docket No. ER02–1894.

Consistent with the effective date of the Federal Energy Regulatory Commission's approval of Bethlehem's revenue requirements in Docket No. ER02–1894, PJM requests an effective date of July 1, 2002 for the revisions.

Copies of this filing have been served on all persons on the service list in Docket No. ER02–1326–000, all PJM members, and the state electric utility commissions in the PJM region.

Comment Date: August 9, 2002.

7. Louis Dreyfus Electric Power Inc.

[Docket No. ER02–2355–000]

Take notice that on July 17, 2002, Louis Dreyfus Electric Power Inc. (LDEP), tendered for filing a notice of cancellation of its Rate Schedule FERC No. 1.

Comment Date: August 7, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19307 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

July 25, 2002.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2155.

c. *Date filed:* July 12, 2002.

d. *Submitted By:* Pacific Gas and Electric Company.

e. *Name of Project:* Chili Bar Project.

f. *Location:* Project is located on the South Fork of the American River in El Dorado County, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from Pacific Gas and Electric Company, Hydro Generation-License Compliance, Mail Code N11C, P.O. Box 770000, San Francisco, CA, 94105. Contact Mr. Richard Doble at (415) 973–4480.

I. *FERC Contact:* James Fargo, 202–219–2848. James.Fargo@Ferc.Gov.

j. *Expiration Date of Current License:* July 31, 2007.

k. *Project Description:* The Chili Bar project has one powerhouse with one generator with a rated capacity of 7,000 kilowatts.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2155. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2005.

A copy of the Notice of Intent is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link— select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in the item above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–19306 Filed 7–30–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7253–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emissions Standards for Hazardous Air Pollutant Emissions for Polyether Polyol Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Polyether Polyols Production, OMB Control Number 2060–0415, expiration date July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 30, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 1811.03 and OMB Control Number 2060–0415, to the following addresses: Susan Auby, United States Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at (202) 566–1672, by E-Mail at *auby.susan@epa.gov* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Number.1811.03. For technical questions about the ICR, contact Sandra Jones at EPA, Office of Compliance at 202–564–7038, by E-Mail at *jones.sandra@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Emissions Standards for Hazardous Air Pollutant Emissions for Polyether Polyol Production, OMB Control Number 2060–0415, EPA ICR Number 1811.03, expiration date July 31, 2002.

Abstract: The National Emissions Standards for Hazardous Air Pollutants for Polyether Polyols production, (40 CFR part 63 subpart PPP) was proposed on June 1, 1999 and published January 30, 2002. These regulations apply to new and existing facilities that engage in the manufacture of polyether polyols (which also include polyether mono-ols) and emit hazardous air pollutants (GAP). Owners or operators of polyester polyols production facilities to which this regulation is applicable must choose one of the compliance options described in the rule or install and monitor a specific control system that reduces HAP emissions to the compliance level. The respondents are also subject to sections of Subpart A relating to NESHAP.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 30, 2002. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 248 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Polyester Polyol Plants.

Estimated Number of Respondents: 82.

Frequency of Response: Semi-annually, Annually, and Initially.

Estimated Total Annual Hour Burden: 88,680.

Estimated Total Annualized Capital, O&M Cost Burden: $513,051.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1811.03 and OMB Control Number 2060–0415 in any correspondence.

Dated: July 23, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–19322 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7253–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that EPA has forwarded the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Regional Haze Regulations, ICR number 1813.02., and OMB Control Number 2060–0421, expiration date: September 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before August 30, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1813.02, and OMB Control No. 2060–0421, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Sandy Farmer at EPA by phone at (202) 260–2740, by e-mail at *farmer.sandy@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1813.02. For technical questions about the ICR, contact Thomas Driscoll by phone at (919) 541-5135, by e-mail at *driscoll.tom@epa.gov*, or by mail at Integrated Policy and Standards Group (C504–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: *Title:* Regional Haze Regulations, ICR number 1813.02., and OMB Control Number 2060–0421, expiration date: September 30, 2002. This is a request for reinstatement, with change, of a previously approved collection for which approval is expiring.

Abstract: Section 169A of the Clean Air Act (CAA) establishes a national goal for protecting visibility in 156 scenic areas. These 156 ''Class I'' areas are federally protected areas. The national visibility goal is to remedy existing impairment in these Class I areas, consistent with the requirements of section 169A and 169B of the CAA. Entities that are affected by these rulemakings (subject to best available retrofit technology (BART) Guidelines) would be those facilities built between 1962 and 1977, are major sources (emit greater than 250 tons per year) of any of the visibility impairing pollutants, and are one of 26 source categories which include electricity generating utilities, facilities with industrial boilers, and petrochemical facilities. The regional haze rule sets forth requirements for State Implementation Plans (SIPs) under this program. The rule requires SIPs to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, the proposed Western Regional Air Partnership (WRAP) Annex rule, that may be followed by nine Western States and eligible Indian Tribes and contains a number of recommended strategies designed to improve visibility at the 16 Class I areas on the Colorado Plateau.

All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of EPA, including whether the information will have practical utility;

(ii) evaluate the accuracy of EPA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The total burden is computed from the time and effort needed to complete the primary activities in the Regional Haze Rule. These activities include the committal Federal Implementation Plan as required in 40 CFR 51.308; the requirement to begin the analysis process for BART determinations, progress goals, and control strategies in 40 CFR 51.308; and the initial implementation plan submission required in 40 CFR 51.309.

These burden hour and costs estimates are incremental to the activities and accomplishments of the States, Tribes, and potentially regulated facilities associated with the grants to the Regional Planning Organizations.

The estimated incremental burden hours for States, Tribes, and potentially regulated entities are 78,000, 29,000, and 28,000 respectively for the 3-year ICR renewal period (October 1, 2002 through September 30, 2005). The estimated corresponding incremental cost is $3.1 million, $1.2 million, and

$1.3 million respectively in present value terms using 2001 year dollars.

The estimated incremental burden for the Federal government is 10,500 hours with 4,000 of these hours for Federal Land Manager activities and the remainder for EPA activities. The estimated incremental cost in present value (2001 year dollars) is $363,000 with $121,000 of that for Federal Land Manager activities and the rest for EPA activities.

The burden estimates for the first ICR renewal period cover different task elements than those for the original ICR. These differences reflect the requirements of the 1999 Regional Haze Rule with respect to the scheduled events and activities in the implementation process.

Dated: July 12, 2002.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 02–19326 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0147; FRL–7189–5]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (FIFRA SAP) to consider and review a methodology to assess children's exposure and dose to wood preservatives from treated playsets and residential decks using EPA's Stochastic Human Exposure and Dose Simulation (SHEDS) Probabilistic Model.

DATES: The meeting will be held on August 30, 2002, from 8:30 a.m. to approximately 5 p.m.

For dates on requests to present oral comments, submission of written comments, or requests for special seating arrangements, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at Sheraton Crystal City Hotel, 1800 Jefferson Davis Hwy., Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111.

Requests to present oral comments, submission of written comments, or requests for special seating arrangements may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2002–0147 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Designated Federal Official (DFO), Office of Science Coordination and Policy (7202M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: odiott.olga@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and Food Quality Protection Act (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

A meeting agenda, EPA's position paper, questions to FIFRA SAP, and FIFRA SAP composition (i.e., members and consultants) will be available no later than August 15, 2002. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at http://www.epa.gov/scipoly/sap.

2. *In person*. The Agency has established an official record for this meeting under docket ID number OPP–2002–0147. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How May I Participate in this Meeting?

You may submit requests to present oral comments, written comments, or requests for special seating arrangements through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0147 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments.

Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern standard time, August 21, 2002, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, and chalkboard). Oral comments before

FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, the speaker should bring to the meeting 30 copies of the oral comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments*. Although submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted no later than noon, eastern standard time, August 14, 2002, to provide the FIFRA SAP the time necessary to consider and review the written comments. There is no limit on the extent of written comments for consideration by the FIFRA SAP. Persons wishing to submit written comments at the meeting should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact the DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Submission of requests and written comments*—a. *By mail*. Submit your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Pennsylvania Ave., NW., Washington, DC 20460.

b. *In person or by courier*. Deliver your request or written comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

c. *Electronically*. You may submit your request or written comments electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0/9.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket ID number OPP–2002–0147. You may also file a request online at many Federal Depository Libraries.

II. Background

A. Purpose of the Meeting

The FIFRA SAP will meet to consider and review the proposed methodology for conducting a probabilistic children's exposure and dose assessment to wood preservatives from treated playsets and residential decks using EPA's SHEDS model. The FIFRA SAP will be asked to discuss the appropriateness of the model algorithms, the selection of model input distributions for non-chemical specific parameters (e.g., activity-related factors, exposure factors), and the statistical methods used to quantify variability and uncertainty of model inputs and outputs. To assist the FIFRA SAP in their evaluation of the SHEDS model, each FIFRA SAP member will be provided CD(s) containing a technical manual, SHEDS software, user manual, and annotated code. The FIFRA SAP will also be provided with a case study for a hypothetical low-exposure chemical and a hypothetical high-exposure chemical that will demonstrate the model interface, algorithms, inputs, and outputs.

B. The FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number listed in Unit I. of the **SUPPLEMENTARY INFORMATION**.

List of Subjects

Environmental protection, Pesticides,probabilistic assessment children exposures.

Dated: July 24, 2002.

Sherell A. Sterling,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 02–19229 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0156; FRL–7188–5]

Butylate Tolerances are Considered to be Reassessed by EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA is considering as reassessed all tolerances for residues of the herbicide butylate. The Agency has determined that no common mechanism exists among butylate and the thiocarbamates. Therefore, the Agency is not amending its previous notice which constituted EPA's report on the Food Quality Protection Act (FQPA) of 1996 tolerance reassessment progress and interim risk management decision for butylate. By itself, butylate poses no risk concerns within the limits of the existing tolerances, which will remain in effect at 0.1 part per million (ppm) for all registered commodities; however, the Agency intends to revise the commodity definitions in accordance with current Agency administrative practice. By law, EPA is required by August 2002 to reassess 66% of the tolerances in existence on August 2, 1996, or about 6,400 tolerances. The regulatory actions in this document pertain to the reassessment of seven tolerances which are counted among tolerance/exemption reassessments made toward the August 2002 review deadline.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8037; e-mail address: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug, and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access the butylate TRED (Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision) and butylate TRED support documents electronically, go directly to http://www.epa.gov/pesticides/reregistration/butylate/. You can also go to the EPA Office of Pesticide Programs website for Tolerance Reassessment and Reregistration, at http://www.epa.gov/pesticides/reregistration/status.htm for additional information on butylate.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0156. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

This notice announces to the general public that EPA has determined that seven tolerances for residues of butylate are considered to be reassessed. EPA evaluated existing pesticide tolerances under the FQPA of 1996. The butylate tolerances included in this notice have been found to meet the FQPA safety standard.

On September 11, 2001 (66 FR 47219) (FRL–6796–3), EPA published a notice in the **Federal Register**, entitled ''Butylate; Notice of Pesticide Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision.'' That notice constituted the Agency's report on the FQPA tolerance reassessment progress and interim risk management decision for butylate. At that time, the Agency had not made a full reassessment because the cumulative risk from thiocarbamates, such as butylate, had not been evaluated. The September 11, 2001, notice provided a 30–day comment period and invited public comment for consideration. No comments were received by the Agency. Since then, the Agency has made a determination on whether two subgroups of the pesticides, thiocarbamates and dithiocarbamates, belong to a larger group of chemicals known as carbamates and share a common mechanism of toxicity. The Agency considered whether they cause a common effect that is attributable to a common mechanism. A total of four common effects were considered, including acetylcholinesterase inhibition. The Agency, guided by several relevant science policies, summarized its position on December 19, 2001, with respect to the grouping of the thiocarbamate pesticides based on a common mechanism of toxicity and the results of a screening level cumulative risk assessment. That December memorandum is entitled ''Thiocarbamates: A Determination of the Existence of a Common Mechanism of Toxicity and a Screening Level Cumulative Food Risk Assessment.'' In that memorandum, EPA announced its determinations that:

1. Some thiocarbamates (EPTC, molinate, pebulate, and cycloate) share a common mechanism of toxicity for acetylcholinesterase inhibition.

2. There is insufficient evidence for grouping the thiocarbamate pesticides based on a common mechanism for toxicity for effects other than acetylcholinesterase inhibition.

Although, structural and metabolic similarities exist among the thiocarbamates and there is evidence that the thiocarbamates may produce a common effect (neuropathology), this evidence is insufficient to warrant a determination of common mechanism.

Also, EPA conducted a preliminary screening level cumulative food risk assessment for thiocarbamates which incorporated very conservative assumptions; i.e., assumptions which overstate significantly the actual level of potential risk. While a common mechanism of toxicity could not be established for neuropathology, the effect was selected as the endpoint for use in a screening level cumulative risk assessment to assure that risks would not be underestimated. In part, the Agency concluded that given the high dose required to provide evidence of neuropathological potential and the questionable significance of the solitary finding in a single study conducted with butylate, it is unlikely that butylate would contribute to any cumulative dietary risk that might result from dietary exposure to two or more thiocarbamates. Because the ''No Observed Adverse Effect Level'' (NOAEL) for neuropathological effects of butylate is substantially higher (120–times greater) than the NOAEL used to establish a reference dose (RfD) for butylate, and because neuropathology was observed at a limit dose (2,000 milligrams/kilograms/day (mg/kg/day), it is unlikely that butylate would contribute to potential cumulative risks of the thiocarbamates.

EPA placed the December 19, 2001 memorandum, entitled ''A Common Mechanism of Toxicity Determination for Thiocarbamate Pesticides.'' in a docket with its attachments. Also, the memorandum is available on the Agency's website at http://www.epa.gov/pesticides/cumulative/thiocar.htm. EPA notified its stakeholders of its determination using the Pesticide Program Update Messaging System and announced the availability of these documents to the media. Further, EPA invited the public to submit comments on these determinations during a 60–day period, until February 22, 2002. No significant comments were received regarding butylate during the provided 60–day period. Therefore, chronic cumulative dietary risks for butylate are not of concern to the Agency, and all tolerances for butylate in 40 CFR 180.232 for corn, field, grain; corn, pop, grain; corn, sweet (kernels, plus cob with husk removed); corn, field, stover; corn, field, forage; corn, pop, forage; and corn, sweet, forage are now considered fully reassessed according to FQPA because aggregate risks were previously assessed (66 FR 47219) and cumulative risk does not apply. These commodity tolerances are each maintained at 0.1 ppm.

In addition, to conform to current Agency practice, EPA will revise specific commodity tolerance definitions in 40 CFR 180.232, according to its prior notice of September 11, 2001 (66 FR 47219), in a future action that will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for tolerance reassessment falls under FFDCA, as amended in 1996. Section 408(q) of FFDCA directs that ''the Administrator shall review tolerances and exemptions for pesticide chemical residues in effect on the day before the date of the enactment of the FQPA of 1996, as expeditiously as practicable, assuring that—66 percent of such tolerances and exemptions are reviewed within 6 years (i.e., by August 3, 2002), of the date of enactment of such Act (i.e., on August 3, 1996), and—shall determine whether the tolerance or exemption meets the requirements of sections 408(b)(2) or (c)(2) and shall, by the deadline for the review of the tolerance or exemption, issue a regulation under section 408 (d)(4) or (e)(1) to modify or revoke the tolerance or exemption if the tolerance or exemption does not meet such requirements.'' Under section 408 of the FFDCA, a tolerance may only be maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In section 408(b)(2) of the FFDCA, ''the term 'safe,' with respect to a tolerance for a pesticide chemical residue, means that the Administrator has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.''

List of Subjects

Environmental protection. Chemicals, Pesticides and pests, thiocarbamate(s).

Dated: July 19, 2002.

Lois Ann Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–19105 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7252–5]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act; Glen Dale TCE Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Glen Dale TCE Site, Glen Dale, Marshall County, West Virginia. The administrative settlement was signed by the Regional Administrator of the Environmental Protection Agency (EPA), Region III, on July 22, 2002, and is subject to review by the public pursuant to this document.

The Environmental Protection Agency is proposing to enter into a settlement pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(h). The proposed settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607 against Rembar LLC for response costs incurred at the Glen Dale TCE Superfund Site, Glen Dale, Marshall County, West Virginia. The proposed settlement requires Rembar LLC to pay $15,000 to the EPA Hazardous Substance Fund.

Rembar LLC, as the Settling Party, has executed binding certifications of its consent to participate in this settlement. Rembar LLC, has agreed to pay $15,000 subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this notice.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before August 30, 2002.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and should reference the Glen Dale TCE Site, Glen Dale, West Virginia, U.S. EPA Docket No. CERCLA 03–2002–0192–DC. The proposed settlement agreement is available for public inspection at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103. A copy of the proposed settlement agreement can be obtained from Joan Johnson, Acting Regional Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, telephone number (215) 814–2651.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Parent, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Office of Regional Counsel (3RC44), 1650 Arch Street, Philadelphia, Pennsylvania, 19103, telephone number (215) 814–2630.

Dated: July 22, 2002.

Donald S. Welsh,

Regional Administrator, U.S. EPA, Region III.

[FR Doc. 02–19321 Filed 7–30–02; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Emergency notice of public advisory committee meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

Dates and Place: August 5, 2002, at 1 pm. This meeting will take place via a telephone conference call. In light of the short notice of this meeting, OSTP will undertake to make this meeting available to the public through the following call-in number: 1–800–260–0712, access code: 647402. Any interested member of the public may call this number and listen to the meeting. To ensure the agency secures an appropriate number of lines, however, such persons are asked to register with OSTP by calling Cynthia Chase at (202) 456–6010 by 4 pm on Friday, August 2, 2002.

Type of Meeting: Open.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is tentatively scheduled to meet in open session on Monday, August 5, 2002, at approximately 1 pm, to discuss (and, pending the discussion, approve) a draft report to the President on maximizing the contribution of science and technology within the new Department of Homeland Security (DHS). This session will end at approximately 1:30 pm.

Public Comments: Written public comments are welcome at any time prior to the meeting. Please fax your comments to (202) 456–6021. In light of the compressed notice period for this meeting, public comments are also welcome for an additional three days after the meeting (i.e., up to close of business Thursday, August 8, 2002). Please fax such comments to the same fax number noted above. The transcript of the meeting will be posted on the PCAST web site as soon as possible following the meeting. Moreover, any person may listen to a recording of the meeting on Tuesday, August 6, 2002, from 8 am to 5 pm, by calling 1–800–475–6701, access code: 647402.

Reason for Emergency Notice: Pursuant to 41 CFR Part 102–3.150(b), less than 15 days notice is being given for this meeting because of the exigencies involved in providing timely and relevant advice to the President on the matters to be discussed. Legislation to establish the DHS is moving extremely swiftly through Congress, and negotiations between Congress and the Administration on the structure of the new Department (including the DHS research and development enterprise) have already begun. In light of these exceptional circumstances, regular notice and meeting procedures would prevent PCAST from rendering advice pertinent to these current events in a timely fashion.

FOR FURTHER INFORMATION: Information on this meeting will be published on the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* The draft report to be discussed during the call will be posted on this web site at the earliest possible opportunity. Any updates on the scheduling of the conference call will also be posted. For additional information, please call Cynthia Chase at (202) 456–6010.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–19445 Filed 7–30–02; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 15, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 30, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0315.

Title: Section 76.1615, Sponsorship Identification.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 700.

Estimated Time per Response: 30 minutes.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 350 hours.

Total Annual Costs: $1,400.

Needs and Uses: 47 CFR 76.1615 (formerly Section 76.221(a)(c)) states that when a cable operator engaged in origination cablecasting presents any matter for which valuable consideration is paid, the operator must announce the sponsorship of such matter if the sponsor has not already done so. Section 1615(f) also states that sponsorship announcements are waived with respect to the broadcast of ''want ads'' sponsored by an individual but the licensee shall maintain a list to be made available for public inspection showing the name, address and telephone number of each advertiser.

OMB Control Number: 3060–0311.

Title: Section 76.54, Significantly viewed signals; method for special showing.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 12.

Estimated Time per Response: 15 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 180 hours.

Total Annual Costs: $0.

Needs and Uses: 47 CFR 76.54 requires that notice of an audience survey that is conducted by an organization for significantly viewed signal purposes is to be served on all licensees or permittees of television broadcast stations within whose predicted Grade B contour the cable community or communities are located, and all other system community units, franchisees, franchise applicants in the cable community or communities, and the franchise authority. This notification shall be made at least 30 days prior to the initial survey period and include the name of the survey organization and describe the survey's procedures. The notifications provide an opportunity for interested parties to file objections to the survey's methodology.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19294 Filed 7–30–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 24, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0674.

Title: Section 76.1618, Basic Tier Availability.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10,400.

Estimated Time Per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 23,400 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 76.1618 states that a cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information: (a) That basic tier service is available; (b) the cost per month for basic tier service; (c) a list of all services included in the basic service tier. The requirements are to ensure that subscribers are made aware of the availability of basic cable service at the time of installation.

OMB Control No.: 3060–0645.

Title: Section 17.4, Antenna Registration.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents: 25,600.

Estimated Time Per Response: .25–1.2 hours (average).

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, third party disclosure requirement.

Total Annual Burden: 40,329 hours.

Total Annual Cost: $3,200,000.

Needs and Uses: The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) must register the structure with the Commission. This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. Structure owners are required to provide specific information under Part 17. The data is used by FCC during investigations related to air safety or radio frequency interference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–19295 Filed 7–30–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011733–007.

Title: Common Ocean Carrier Platform Agreement.

Parties: Alianca Navegacao e Logistica Ltda., A.P. Moller-Maersk Sealand, CMA CGM, S.A., CP Ships Limited, Hamburg Sud, Hapag-Lloyd Container Linie GmbH, Mediterranean Shipping Company, S.A., Nippon Yusen Kaisha, P&O Nedlloyd Limited, Safmarine Container Lines N.V., United Arab Shipping Company (S.A.G.).

Synopsis: The proposed amendment would permit shippers to use the INTTRA portal to assemble service contract proposals by arranging data and disseminating tenders to the party or parties of the shipper's choice.

Agreement No.: 011811.

Title: CMA/Contship Slot Charter Agreement.

Parties: CMA CGM, S.A., Contship Containerlines.

Synopsis: Under the proposed agreement, CMA would charter space to Contship in the trade generally between U.S. West Coast ports and ports in the Far East and the Indian Subcontinent.

Agreement No.: 201138.

Title: San Francisco/Star Shipping Marine Terminal Agreement.

Parties: San Francisco Port Commission, Star Shipping, AS.

Synopsis: The agreement provides for the non-exclusive right to use the port's marine terminal at Pier 80. The agreement runs through July 17, 2007.

By Order of the Federal Maritime Commission.

Dated: July 26, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–19293 Filed 7–30–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Colletion; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) is seeking public comments on its proposal to extend through December 31, 2005 the current Paperwork Reduction Act (''PRA'') clearance for information collection requirements contained in its regulations under the Fair Packaging Labeling Act (''regulations''). That clearance expires on December 31, 2002.

DATES: Comments must be filed by September 30, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''FPLA Regulations: Paperwork Comment,'' as appropriate. Comments in electronic form should be sent to: *FPLA pprwk@ftc.gov* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Stephen Ecklund, Investigator, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2841.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *FPLA pprwk@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii).

The FPLA was enacted to eliminate consumer deception concerning product size representations and package content information. The regulations that implement the FPLA, 16 C.F.R. Parts 500–503, establish requirements for the manner and form of labeling applicable to manufacturers, packagers, and distributors of ''consumer commodities.'' [1] Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product.

Estimated annual hours burden: 8,095,000 total burden hours (solely relating to disclosure [2]).

[1] ''Consumer commodity'' means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. 16 CFR 500.2(c). For the precise scope of the term's coverage see 16 CFR 500.2(c); 503.2; 503.5. See also *http://www.ftc.gov/os/statutes/fpla/outline.html.*

[2] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate ''cents off,'' ''introductory offer,'' and/or ''economy size'' claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates.

Staff conservatively estimates that approximately 809,500 manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure of 8,095,000 hours.

Estimated annual cost burden: $135,187,000, rounded (solely relating to labor costs).

The estimated annual labor cost burden associated with the FPLA disclosure requirements consists of an estimated hour of managerial and/or professional time per covered entity (at an estimated average hourly rate of $50) and nine hours of clerical time per covered entity (at an estimated average hourly rate of $13), for a total of $135,186,500 ($167 per covered entity × 809,500 entities).

Total capital and start-up costs are de minimis. For many years, the packaging and labeling activities that require capital and start-up costs have been performed by covered entities in the ordinary course of business independent of the FPLA and implementing regulations. Similarly, firms provide in the ordinary course of business the information that the statute and regulations require be placed on packages and labels.

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–19280 Filed 7–30–02; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF GOVERNMENT ETHICS

Draft OGE Information Quality Guidelines

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics announces that its draft Information Quality Guidelines have been posted on the OGE Web site. The Office of Government Ethics invites public comments on its draft guidelines and will consider the comments received in developing its final guidelines.

DATES: Comments are due on or before August 30, 2002.

ADDRESSES: Comments should be sent to: Mary T. Donovan, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at *usoge@oge.gov* (for E-mail messages, the subject line should include the following reference—''Draft OGE Information Quality Guidelines Comment'').

FOR FURTHER INFORMATION CONTACT: Mary T. Donovan at the Office of Government Ethics; telephone: (202) 208–8000, ext. 1185; TDD 202–208–8025; FAX: 202–208–8037. A copy of the draft guidelines may be obtained, without charge, by contacting Ms. Donovan.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury & General Government Appropriations Act for FY 2001 (Public Law No. 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates to the public. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In compliance with this statutory requirement and OMB instructions, OGE has posted its draft Information Quality Guidelines on the OGE Internet Web site (*http://www.usoge.gov* under ''What's New!''). The draft guidelines describe the Agency's proposed procedures for ensuring the quality of information that it disseminates to the public and the proposed procedures by which an affected person could obtain correction of information disseminated by OGE that did not comply with the guidelines. The Office of Government Ethics invites public comments on its draft guidelines and will consider the comments received in developing its proposed final guidelines, which must be submitted to OMB for review.

Persons who cannot access the draft guidelines through the Internet may request a paper or electronic copy by contacting Ms. Donovan at the address, phone number, E-mail address, or FAX number listed above.

Approved: July 25, 2002.

James V. Parle,

Deputy Chief Information Officer, Office of Government Ethics.

[FR Doc. 02–19273 Filed 7–30–02; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–40–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Survey for Laboratory Containment of Wild Polioviruses—New—National Vaccine Program Office (NVPO), Centers for Disease Control and Prevention (CDC). Global polio eradication is anticipated within the next few years. The only sources of wild poliovirus will be in biomedical laboratories. Prevention of inadvertent transmission of polioviruses from the laboratory to the community is crucial.

The first step toward laboratory containment is a national survey of all biomedical laboratories. The survey will alert laboratories to the impending eradication of polio, encourage the disposition of all unneeded wild poliovirus infectious and potential infectious materials, and establish a national inventory of laboratories retaining such materials. Laboratories on the inventory will be kept informed of polio eradication progress and notified, when necessary, to implement biosafety requirements appropriate for the risk of working with such materials.

In June 2001, the Secretary for Health and Human Services, Tommy Thompson, declared in a letter to the Regional Director of the Pan American Health Organization that:

> The United States is fully committed to PAHO's Executive Committee Resolution CE126.R4 urging Member States ''to initiate activities related to the containment of any laboratory material that may harbor specimens of wild poliovirus.''

The Department of Health and Human Services proposes a national survey of all biomedical laboratories that may possess wild poliovirus infectious or potential infectious materials. An estimated 15,000 biomedical laboratories, in six categories of institutions: academic, federal government, hospital, industry, private, and state and local government facilities, will be included in the national survey.

The national survey instruments and logistics will be tested during the OMB approved Pilot Survey (OMB Number: 0920–0545), scheduled to begin May 2002. The survey instruments ask laboratories to indicate whether or not they possess wild poliovirus infectious and/or potential infectious materials. If such materials are present, respondents are asked to indicate the types of materials and estimated numbers retained. Survey instruments will be available on the NVPO Web page, and institutions will be encouraged to submit completed survey forms electronically. The annual burden for this data collection is 6,969 hours.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hours)
Laboratories	9,292	1	45/60

Dated: July 24, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–19252 Filed 7–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02122]

Cooperative Agreement for the Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Domestic Violence Prevention Enhancement and Leadership Through Alliances (DELTA) Program. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

The purpose of the program is to stimulate the development and implementation of activities to prevent domestic violence that can be integrated into coordinated community responses (CCRs) or similar community-based collaborations at the state and local level. Specifically, the DELTA program seeks to add a significant prevention focus to the existing CCR model by funding state domestic violence coalitions who will act as intermediary organizations in providing prevention-focused technical assistance, training, and funding to local communities. For the purposes of this announcement, activities to prevent domestic violence are defined as population-based and/or environmental/system level services, policies and actions that prevent domestic violence from initially occurring and require a community level process to identify and implement. These activities to prevent domestic violence will be referred to as 'prevention enhancements' throughout the remainder of this announcement.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Reduce violence against women.

B. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2), 318 and 391–394 of the Public Health Service Act, (42 U.S.C. 241(a), 247b(k)(2), and 280b–280b–2), as amended. The Catalog of Federal Domestic Assistance number is 93.136.

C. Eligible Applicants

Assistance will be provided only to state domestic violence coalitions (as designated by the Administration on Children and Families of the U.S. Department of Health and Human Services) that qualify as private nonprofit organizations. Competition is being limited to state domestic violence coalitions that qualify as private nonprofit organizations due to the legislative language. Where appropriate, state domestic violence coalitions are encouraged to partner with other state-level organizations (i.e. state level advisory councils) that also have significant responsibility for the domestic violence prevention and intervention services or policy at the state level. Only one application per state will be awarded.

Public Law 104–65 states than an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, contract, loan, or any other form.

D. Availability of Funds

Approximately $2.6 million is available in FY 2002 to fund approximately ten awards. There will be approximately three awards for states with populations of more than ten million as determined by the 2000 Census. These three awards are expected to average $400,000, ranging from $350,000 to $500,000. There will be approximately seven awards for states with populations less than ten million people as determined by the 2000 Census. These seven awards are expected to average $200,000, ranging from $150,000 to $300,000. Applicants can access the web address *http://quickfacts.census.gov,* to determine if their state has a population of more than or less than ten million people. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Matching funds are not required for this program.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Use of Funds

Throughout the project period (Years one, two, & three), recipients may annually retain up to 25 percent of the DELTA program award for staff and administrative expenses required to support cooperative agreement tasks including the purchase of computer hardware and software. Applicants may enter into contractual agreements to purchase goods and services, or to support cooperative agreement activities, but the applicant must retain proper stewardship over funds and responsibility for tasks associated with the project. DELTA Program cooperative agreement funds may not be used to supplant current applicant expenditures. Budgets for the first year should include travel costs for two cooperative agreement staff to attend one two-day and two three-day planning meetings in Atlanta with CDC staff, other cooperative agreement recipients, and the evaluation contractor. The first planning meeting will take place within 45 days of the award and will focus on the development of core components for the needs assessment, inventory, and sub-award application. The second meeting will take place approximately six months after the award and will focus on reports from state domestic violence coalitions regarding the results of the completed needs assessment, inventory, and sub-award process and development of the cross-site evaluation. Therefore, it will be extremely important that the state domestic violence coalitions who are awarded funding from this cooperative agreement are able to complete these tasks in the allotted time frame. The third planning meeting will take place in the 12th month of the award. Planning meetings will also provide an opportunity for state domestic violence coalitions to share their expertise, for CDC to provide technical support, and for collaboration on the cross-site evaluation of the DELTA Program.

The remaining 75 percent of annual DELTA Program funds should be awarded to private non-profit organizations working to develop or maintain coordinated community responses to domestic violence in local communities. These local community recipients may use DELTA Program funds to establish prevention enhancements to the CCR model in their local communities. In granting sub-awards, strong consideration should be given by cooperative agreement recipients to geographical (rural vs.

urban) diversity within the state, ethnic diversity within the state, and diversity of developmental stages of the local CCRs.

The use of DELTA program funds for the development and production of new educational materials, media campaigns or curricula is prohibited without explicit approval. If requested, approvals will be contingent upon a demonstration of specific community need, identification of the intended community impact and a demonstration of an exhaustive exploration of the available national, state, and local materials and resources.

The first budget period (Year one) will serve as a planning period during which the state domestic violence coalitions will collaborate with the CDC staff from both NCIPC and the Office of Program Planning and Evaluation (OPPE), as well as the CDC-selected evaluation contractor on conducting an environmental scan of coordinated community responses in each state, the development of the DELTA Program's prevention enhancements, the cross-site evaluation of the DELTA Program, and the schedule of activities for the remaining DELTA Program project period.

Development and implementation of the prevention enhancements are expected to be primary activities throughout the project period. Planning and coordination of activities with other DELTA Program cooperative agreement recipients and the CDC is expected throughout the three-year project period.

2. Funding Preferences

The authorizing statute, 42 U.S.C. 10418, requires that funding shall be awarded to organizations that are geographically dispersed throughout the country. Therefore, an important consideration for funding under this announcement is a national geographic balance among the awards.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities. Applicants are encouraged to consult the Program Guidance greater clarification of these activities.

1. Recipient Activities

a. Collaborate, which includes establishing mutually-agreed upon goals and objectives, with other cooperative agreement recipients, the CDC and a CDC-selected evaluation contractor on the development of the environmental scan and the DELTA Program prevention enhancements to the CCR model, implementation and dissemination of these projects and a cross-site evaluation of the DELTA Program.

b. Implement DELTA program prevention enhancements by providing technical assistance, training, and funding opportunities to local communities. Local communities do not have to receive funding from the DELTA Program to receive DELTA Program training and technical assistance services.

c. Conduct a needs assessment and inventory of local communities, based on core components developed collaboratively with other cooperative agreement recipients, the CDC and the CDC-selected evaluation contractor, regarding CCR development and maintenance, including status of current prevention activities, especially those that are innovative in nature.

d. Expand the content, capacity, and accomplishments of CCR-related technical assistance and training provided to local communities based on information garnered from the completed needs assessment and inventory and the developed DELTA Program prevention enhancements.

e. Partner with other state-level organizations (i.e. state level domestic violence advisory councils) that also have significant responsibility for domestic violence prevention and intervention services or policy at the state level.

f. Develop and disseminate domestic violence prevention and intervention state protocols to local communities.

g. Monitor progress of local communities receiving DELTA program sub-award funding for prevention enhancement.

h. Attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients.

i. Compile and disseminate project results. Potential audiences for dissemination include local community agencies, state domestic violence coalitions, state sexual assault coalitions, and funding agencies.

j. Submit required reports to CDC on time.

2. CDC Activities

a. Provide technical assistance and consultation in the development, implementation, and evaluation of the DELTA Program.

b. Collaborate with the cooperative agreement grant recipients in the development, implementation, and evaluation of the DELTA program.

c. Contract with a third-party to conduct a cross-site evaluation.

d. Arrange for information sharing among the various projects and facilitate exchange of information and expertise among the different sites.

e. Analyze evaluation/research information for presentation and publication.

F. Content

Application

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with 1-inch margins, and unreduced font.

The narrative should consist of at a minimum:

1. Abstract (one-page summary of the application that includes the amount of funding requested and a description of applicant's plan for participating in this cooperative agreement)
2. Applicant Organization History and Description
3. Applicant's Experience in Developing Coordinated Community Responses
4. Applicant's Management and Staffing
5. Plans for Developing and Implementing the DELTA Program
6. Collaboration
7. Measures of Effectiveness
8. Proposed Budget Justification

G. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

They may also be obtained by contacting the Grants Management Specialist listed in this announcement. Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form

Indirect Cost Rate Agreement
Narrative

Applications may not be submitted electronically.

The application must be received by 5 p.m. Eastern Time August 30, 2002. Submit the application to: Technical Information Management—PA02122, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria, will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually by an independent review group appointed by CDC against the following criteria:

1. Applicant's Experience in Developing Coordinated Community Responses (30 Points)

a. The extent to which the applicant has provided evidence of being able to support the development of CCRs within its state. The applicant has included, as Attachment B, a listing of the names, contact information years in operation for each CCR operating within the state and geographic areas or communities currently lacking a CCR of any sort. The applicant has included, as Attachment C, letters of support from three local CCRs regarding their satisfaction with the applicant's CCR development services, and evidence of the applicant's history of influence on CCR development within the state.

b. The extent to which the applicant's experience in supporting CCR development demonstrates its capacity to participate effectively in this cooperative agreement.

c. The extent to which the applicant's recent CCR-related technical assistance/training accomplishments and content areas demonstrate the ability to participate effectively in this cooperative agreement.

d. The extent to which the applicant demonstrates experience in providing technical assistance and training to local communities to establish and maintain CCRs to domestic violence in the service of priority populations. These priority populations could include communities that represent racial or ethnic groups, immigrants, disabled, underserved and low socio-economic status communities.

e. The extent to which the applicant's successes and lessons learned in developing the CCR model within its state demonstrates innovation or creativity, flexibility and responsiveness to local needs, and improvement in the efficiency and effectiveness of services.

2. Plans for Developing and Implementing the DELTA Program (25 Points)

a. The extent to which the applicant demonstrates a willingness and ability to involve state health agencies and other appropriate state agencies in supporting the purposes of this cooperative agreement.

b. The extent to which the applicant's process to prioritize areas and local communities within the state to receive funding, technical assistance, and training supported by this cooperative agreement reflects a commitment to seeking input from diverse sectors of the community, to use data from the needs assessment and inventory, and other pertinent data.

c. The extent to which the applicant's plan for monitoring the progress of local communities that receive CCR sub-awards is feasible and will not be an undue burden to the local communities or the applicant.

3. Collaboration (20 Points)

a. The extent to which the applicant demonstrates a successful history of collaborating effectively with other organizations at the national, state, and local levels.

b. The extent to which the applicant demonstrates an understanding of the impediments and facilitators of effective collaboration between organizations.

c. The extent to which the applicant demonstrates a willingness to collaborate with the other cooperative agreement recipients funded under this announcement, the CDC and the CDC evaluation contractor on all phases of the project (e.g., needs assessment core components, sub-award application core components, development of the Environmental Scan and prevention-focused CCR model, reporting requirements, and evaluation core components).

d. The extent to which the applicant demonstrates a willingness to attend and participate in technical assistance and planning meetings coordinated by the CDC for all cooperative agreement recipients.

4. Applicant's Management and Staffing (15 Points)

a. The extent to which management operation, structure and/or organization demonstrate an ability to effectively carry out the required activities in this cooperative agreement.

b. The extent to which the applicant's proposed staffing for the project, noting existing staff as well as additional staffing needs, demonstrates an ability to participate effectively in this cooperative agreement.

c. The extent to which the applicant's description of the responsibilities of individual staff members, including the level of effort and allocation of time for each project activity by staff position, demonstrates an ability to effectively manage and implement the activities of this cooperative agreement.

d. The extent to which the applicant plans to train and support staff, and of the availability of staff and facilities to carry out the program plan. Additionally, the applicant's description of a continuation plan that would provide a smooth integration of new staff into the project, and insure that resources will be available when needed for this project.

e. The extent to which the applicant demonstrates an ability to compile and disseminate project results and submit required reports on time.

5. Applicant Organization History and Description (10 Points)

a. The extent to which the applicant has demonstrated a leadership function in collaborating with diverse sectors of the state to oppose domestic violence, including serving priority populations.

b. The extent to which the applicant has demonstrated a community action component to improve and expand domestic violence intervention and prevention services throughout the state.

c. The extent to which the applicant has demonstrated an ability to plan and implement outreach and public education campaigns regarding domestic violence.

d. The extent to which the applicant has cooperated in or spearheaded the development of state protocols regarding domestic violence. Applicants should include examples of such protocols as Attachment A.

e. The extent to which the applicant has experience in funding and monitoring sub-awards.

f. The extent to which the applicant has demonstrated experience in providing training and technical assistance to local domestic violence programs whether through conferences or other training/technical assistance mechanisms.

g. The extent to which the applicant participated in the development of and/or referenced any state-level violence against women prevention plan.

6. Measures of Effectiveness (Not Scored)

The extent to which the applicant provided objective/quantifiable measures regarding the DELTA program's intended outcomes that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Applicants are encouraged to consult the Program Guidance (See Attachment 3 in the application kit) for further clarification.

7. Budget (Not Scored)

The applicant should provide a detailed budget with complete line-item justification of all proposed costs consistent with the stated activities in this program announcement. Applicants should be precise about the purpose of each budget item and must provide itemized calculations of proposed costs. These funds should not be used to supplant existing efforts.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports will be submitted as part of the grantee's continuation application. The progress report will include a data requirement that demonstrates measures of effectiveness. Specific guidance will be provided by NCIPC for the content of progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the application kit.

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

AR–15 Proof of Non-Profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For business management technical assistance, contact: Van A. King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2751, e-mail address: *VKing@cdc.gov.*

For program technical assistance, contact: Janet Saul, PhD, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Hwy, NW, Mailstop K–60, Atlanta, GA 30341–1125, Telephone number (770) 488–4733, e-mail address: *JSaul@cdc.gov.*

Dated: July 25, 2002.

Edward Schultz,

Acting Director, Procurement and Grants Office Centers for Disease Control and Prevention.

[FR Doc. 02–19284 Filed 7–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: A Community-Based Intervention With Opinion Leaders to Achieve Syphilis Elimination, Program Announcement 02044

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A Community-Based Intervention with Opinion Leaders to Achieve Syphilis Elimination, PA# 02044.

Times and Dates: 9 a.m.–9:30 a.m., August, 15, 2002 (Open), 9:30 a.m.–4:30 p.m., August 15, 2002 (Closed).

Place: Centers for Disease Control and Prevention 12 Corporate Square Boulevard—Room 1307 Atlanta, GA 30329

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02044.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road NE MS E–07, Atlanta, Georgia 30333, 404–639–8025.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Joe E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–19402 Filed 7–29–02; 12:22 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Times and Dates: 12:30 p.m.–5:30 p.m., August 14, 2002. 8 a.m.–5 p.m., August 15, 2002.

Place: Hyatt Regency Cincinnati, 151 West Fifth Street, Cincinnati, Ohio 45202, telephone 513/579–1234, fax 513/352–0245.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS, advice on methods of dose reconstruction which have been promulgated as an interim final rule, evaluation of the validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001 the President completed the appointment of an initial roster of 10 Board members. In April 2002 the President appointed an additional member to ensure more balanced representation on the Board. The initial tasks of the Board will be to review and provide advice on the proposed and interim rules of HHS.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this meeting will include presentations for the Board's information on the adjudication of claims for atomic veterans, dose reconstruction for atomic veterans, and probability of causation determination for atomic veterans. The Board's agenda also includes development of comments on the Special Exposure Cohort Petitioning Process Guidelines (NPRM), dose reconstruction workgroup discussion and issues, and Board discussion of Board responsibilities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 25, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–19283 Filed 7–30–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0315]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices: Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for humanitarian use devices.

DATES: Submit written and electronic comments on the collection of information by September 30, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Humanitarian Use Devices—21 CFR Part 814—Subpart H (OMB Control Number 0910–0332)—Extension

This collection implements the humanitarian use device (HUD) provision under section 520(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(m)) and 21 CFR part 814, subpart H. Under section 520(m) of the act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnosis a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnosis the disease or condition; and (3) the device will not expose patients to an unreasonable or significant risk of illness or injury, and the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collection will allow FDA to determine whether to: (1) Grant HUD designation of a medical device, (2) exempt a HUD from the effectiveness requirements in sections 514 and 515 of the act provided that the device meets requirements set forth in section 520(m) of the act, and (3) grants marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making those determinations. Also, this information enables FDA to determine whether the holder of a humanitarian device exemption (HDE) is in compliance with the HDE requirements.

Description of respondents: Businesses or others for-profit.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.102	20	1	20	40	800
814.104	15	1	15	320	4,800
814.106	15	4	60	50	3,000
814.108	12	1	12	80	960
814.116(e)(3)	1	1	1	1	1
814.124(a)	5	1	5	1	5
814.124(b)	1	1	1	2	2
814.126(b)(1)	15	1	15	120	1,800
Total					11,368

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.126(b)(2)	15	1	15	2	30
Total					30

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Generally, the information requested from the respondents represents an accounting of information already in the possession of the applicant.

In the final rule for HUDs, published in the **Federal Register** of June 26, 1996 (61 FR 33232), FDA based its estimates on comments received to the proposed rule, industry contact, and internal FDA benchmark factors (such as the number of premarket approval applications (PMAs) processed). The numbers generated in the current estimate as shown in tables 1 and 2 of this document and described in the following paragraphs are based upon those prior estimates. This is still a relatively new program, and the data acquired from the past several years has remained fairly stable and consistent.

Dated: July 24, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–19243 Filed 7–30–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Proposed Project: National Health Service Corps (NHSC) Waiver Request Worksheets (OMB No. 0915–0234)—Revision

The National Health Service Corps (NHSC) of the HRSA's Bureau of Health Professions (BHPr), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The NHSC Site Bill is sent to all sites where NHSC members have been assigned for all or part of the calendar year. The sites are billed for the full amount of the calculated costs associated with the assignee(s). The Public Health Service Act, Section 334 contains provisions which permit a waiver of the reimbursement requirement for entities which are assigned Corps members. The Waiver Request Worksheets are used by the NHSC to collect the necessary information from sites which are requesting a waiver to determine if such a waiver is justified.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Billing Form	1200	1	1200	.25	300
Budget Form	1200	1	1200	.75	900
Total	1200	1	2400	1.00	1200

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 25, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–19302 Filed 7–30–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institues of Health

[CHIS–CAM]

Submission for OMB Review; Comment Request California Health Interview Survey—Complementary and Alternative Medicine [CHIS–CAM]

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 22, 2002, pages 2892–2893 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: California Health Interview Survey—Complementary and Alternative Medicine (CHIS–CAM). *Type of Information Collection Request:* New. *Need and Use of Information Collection.* The NCI has sponsored a Cancer Control Topical Module (CCTM) to the California Health Interview Survey (CHIS), administered in 2001. The CHIS is a telephone survey designed to provide population-based, standardized health-related data. Initiated by the USLA Center for Health Policy Research, California Department of Health Services, and the Public Health Institute, the survey was funded by a number of public and private sources.

The 2001 CHIS CCTM was similar in content to the 2000 National Health Interview Survey (NHIS) CCTM and was administered to one sample adult in more than 54,000 households. NCI anticipates comparing the CHIS and NHIS data in order to conduct comparative and pooled analyses that will enable better estimates of health-related behaviors and cancer risk factors for smaller racial/ethnic minority populations.

The CHIS–CAM is a cross-sectional telephone survey nested in the CHIS study population of all adult respondents who agreed to be re-contacted. Complementary and Alternative Medicine (CAM) is a rapidly growing component of prevention and treatment of chronic illness in the United States. Yet the study of cancer has been largely excluded from the existing population-based surveys on CAM due to sample size restrictions, and little reliable information exists on how CAM utilization varies among different ethnic groups and among those with chronic illnesses.

The CHIS–CAM survey will be administered to approximately 2,000 cancer survivors and 6,000 non-cancer adults. It will enable NCI to collect extensive information on CAM, cancer and other chronic illnesses, and link it with the breadth of basic data already collected from the large, racially and ethnically diverse sample of CHIS respondents.

Comprehensive and detailed collection of information on CAM will enable NCI to increase its understanding of how, why, and to what effect CAM is used. The CHIS–CAM survey data will allow NCI to compare individuals who report various types of cancer and other chronic conditions and to determine: (1) The major categories of CAM procedures being used, as well as the specific therapies targeted toward cancer prevention and treatment, (2) how various subgroups in the population (defined by race/ethnicity, gender, age, health status, etc.) compare with regards to CAM procedures being used; (3) to what extent persons with cancer used specific types of CAM before or after diagnoses with cancer, and whether cancer patients used CAM in place of, or in addition to, conventional medical care; (4) whether systematic CAM treatments for cancer might lead to harm or interact with conventional treatments for cancer; and (5) what expenditures people are paying out-of-pocket for CAM procedures. *Frequency of Response.* One-time. *Affected public:* Individuals. *Type of Respondents:* U.S. adults. The annual reporting burden is as follows:

TABLE A.—ANNUALIZED BURDEN ESTIMATES FOR CHIS–CAM DATA COLLECTION

Type of respondents	Estimated number of respondents	Estimated No. of responses per respondent	Average burden hours per response	Estimated total annual burden hour requested
U.S. Adults	8,000	1	.35	2,800

There is no annualized cost to respondents. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in the notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anita Boulevard, Bethesda Maryland 20892–7344, or call non-toll free number (301) 451–8500 or email your request, including your address to *ambsa@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days from the date of this publication.

Dated: July 24, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–19272 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the President's Cancer Panel, July 29, 2002, 9 a.m. to July 30, 2002,[1] 4 p.m., Cultural Center, Yakama Indian Nation, Yakima, WA which was published in the **Federal Register** on July 10, 2002, 67 FR 45747.

The meeting is amended to change the meeting location to Eagle Seelatsee Auditorium, 401 Fort Road, Toppenish, WA. The meeting is open to the public.

Dated: July 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19265 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

[1] Editorial Note: This document was received at the Office of the Federal Register on July 25, 2002.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Fast Track: Phase I Cancer Communication & Interactive Media Technology.

Date: July 31, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, Conference Room J, 6130 Executive Plaza, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: C. Michael Kerwin, PhD, Scientific Review Administrator, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, Msc 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@mail.nih.gov.*

This Notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne J. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19271 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, Project EXPORT.

Date: July 30–31, 2002.[1]

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Teresa Chapa, PhD, Chief, Division of Extramural Activities, National Center on Minority Health and, Health Disparities, National Institutes of Health, Bethesda, MD 20852, 301/402–1366, *chapat@od.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19267 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Cerebrovascular Disease SEP.

Date: August 5, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW., Chevy Chase, MD 20015.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19262 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Program Project.

Date: August 20, 2002.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and, Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19263 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Using Basic Science to Develop New Directions in Drug Abuse Prevention.

Date: July 26, 2002.[1]

Time: 1 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

[1] Editorial Note: This document was received at the Office of the Federal Register on July 25, 2002.

[1] Editorial Note: This document was received at the Office of the Federal Register on July 25, 2002.

Dated: July 23, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19266 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, To Study the Safety, Immunogenicity and Dosage of VI-rEPA Congufate Vaccine.

Date: September 6, 2002.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19268 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. UTI in Women and Diabetes.

Date: August 23, 2002.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 2 Democracy Plaza, 6707 Democracy Blvd., Room 750, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHD)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19270 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., a amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes Complications.

Date: August 1, 2002.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Apoptosis and Carcinogenesis.

Date: August 2, 2002.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ET–2 (05) HPV.

Date: August 5, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunologic Mechanisms of PDT Therapy.

Date: August 5, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 GRM 08.

Date: August 6, 2002.

Time: 9:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Experimental Therapeutics.

Date: August 6, 2002.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon K. Pulfer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Placebo Effect RFA.

Date: August 7, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19264 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F05 Fellowship.

Date: July 25, 2002.[1]

Time: 7 a.m. to 8 a.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel & Suites, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025, *addison@csr.nih.gov.*

[1] Editorial Note: This document was received at the Office of the Federal Register on July 25, 2002.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology Development Special Emphasis Panel.

Date: July 26, 2002.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–19269 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences; National Toxicology Program; Availability of the Report, Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Evaluation of EPISKIN ™, EpiDerm ™ (EPI–200), and the Rat Skin Transcutaneous Electrical Resistance (TER) Assay: *In Vitro* Test Methods for Assessing the Dermal Corrosivity Potential of Chemicals

Summary

The National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) announces the availability of the report entitled, ''ICCVAM Evaluation of EPISKIN ™, EpiDerm ™ (EPI–200), and the Rat Skin Transcutaneous Electrical Resistance (TER) Assay: *In Vitro* Test Methods for Assessing the Dermal Corrosivity Potential of Chemicals,'' NIH Publication 02–4502. The report contains test method summary reports,

protocols, and the ICCVAM's final recommendations on the three methods.

Availability of Report

The report is available electronically (PDF and HTML) on the NICEATM/ICCVAM Web site at *http://iccvam.niehs.nih.gov.* A limited number of printed reports are available. To receive a printed report, please contact the NICEATM at P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, phone: 919–541–2384, fax: 919–541–0947, or *niceatm@niehs.nih.gov.*

Background

ICCVAM initiated evaluation of the validation status of three in vitro test methods for assessing the dermal corrosivity potential of chemicals and chemical mixtures in 2001. The test methods are EPISKIN ™ (EPISKIN SNC, Lyon, France), EpiDerm ™ (EPI–200) (MatTek, Ashland, MA), and the Rat Skin TER assay. The European Centre for the Validation of Alternative Methods (ECVAM) conducted validation studies on the three test methods. The ECVAM Scientific Advisory Committee and the European Commission's Scientific Committee for Cosmetic Products and Non-food Products subsequently reviewed and recommended the methods for regulatory acceptance. The NICEATM prepared a background review document (BRD) summarizing available data and prior reviews for the three corrosivity test methods. ICCVAM considered this compendium of information and concluded that further evaluation by an independent scientific peer review panel was not necessary. The BRD and proposed ICCVAM recommendations on the test methods were made available for public comment in a **Federal Register** notice (Vol. 66, No. 189, pp. 49685–49686; Sept. 28, 2001). All public comments received were posted on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*) and considered by ICCVAM prior to finalizing its test recommendations.

Based on an evaluation of the ECVAM validation studies and all other available data, the ICCVAM recommends that EPISKIN ™, EpiDerm ™ (EPI–200), and the Rat Skin TER assay can be used to assess the dermal corrosivity potential of chemicals and chemical mixtures in a weight-of-evidence approach using an integrated testing scheme for dermal irritation/corrosion. In this approach, positive *in vitro* corrosivity responses will not generally require further testing and the results can be used for classification and labeling without the need for animal testing. Accordingly, these methods provide for the replacement of animal use when positive results are obtained.

In accordance with Public Law 106–545, the ICCVAM test recommendations will be forwarded to Federal agencies for their consideration and appropriate action. Agency responses to ICCVAM test recommendations will be made available on the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*). Inquiries or comments about the report should be addressed to: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709; e-mail: *niceatm@niehs.nih.gov;* fax: 919–541–0947; tel. 919–541–2384.

Dated: July 22, 2002.

Samuel Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–19261 Filed 7–30–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–33]

Notice of Proposed Information Collection: Comment Request; Section 202 Supportive Housing for the Elderly

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 30, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 202 Supportive Housing for the Elderly.

OMB Control Number, if applicable: 2502–0267.

Description of the need for the information and proposed use: This information is required in connection with the application submission requirements for the Section 202 Supportive Housing Program for the elderly. The information is necessary to assist HUD in determining applicant eligibility and capacity to develop housing for the elderly within statutory and program criteria.

Agency form numers, if applicable: HUD–92015–CA, HUD–92041, HUD–92042, HUD–50070, HUD–50071, HUD–2880, HUD–2990, HUD–2991, HUD–2992, SF–424, SF–LLL.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 15,960, the number of respondents is 400 generating approximately 400 annual responses, the frequency of response is on occasion, and the estimated time needed to prepare the response varies from 20 minutes to 22 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1955, 44 U.S.C., Chapter 35, as amended.

Dated: July 23, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–19246 Filed 7–30–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Notice of Renewal of the Wild Horse and Burro Advisory Charter

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (5 U.S.C. App.). Pursuant to section 7 of the Wild Free-Roaming Horse and Burro Act (Public Law 92–195), notice is hereby given that the Secretary of the Interior and the Secretary of Agriculture are renewing the existing Wild Horse and Burro Advisory Board for August 26, 2002, through June 30, 2004.

ADDRESSES: Wild Horse and Burro Group, WO–260, Bureau of Land Management, Department of the Interior, 1849 C St., NW. MS: 204LS, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The purpose of the Wild Horse and Burro Advisory Board is to provide advice concerning management, protection, and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

The Board will meet no less than two times annually. Additional meetings may be called by the Director, Bureau of Land Management, in connection with special needs for advice.

FOR FURTHER INFORMATION CONTACT: John E. Fend, Group Manager, Wild Horse and Burro Program at (202) 452–0379.

Dated: July 26, 2002.

Sharon L. Kipping,

Acting Group Manager, Wild Horse and Burro Group.

[FR Doc. 02–19351 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–02–1120–PG–24–1A]

Notice of Resource Advisory Council Subgroup Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: The purpose of this notice is to announce a Resource Advisory Council Subgroup Meeting scheduled for August 14, 2002, Provo, Utah.

The objective of this meeting will be to evaluate the product of the technical team relative to a best management practice standard for raptor management and consider that in the context of potential development of land use alternatives for land use planning.

The meeting will be held at the Provo Marriott Hotel, 101 West 100 North, Provo, Utah from 9 a.m. until 4 p.m. From 3:30 p.m.–4 p.m., a public comment period is scheduled where members of the public may address the Subgroup. Written comments may be mailed to the Bureau of Land Management at the address listed below.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: July 24, 2002.

Robert A. Bennett,

Associate State Director.

[FR Doc. 02–19285 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–02–1120–PG–24–1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) Meeting.

SUMMARY: The purpose of this notice is to announce a Resource Advisory Council Meeting scheduled for August 27, 2002, Provo, Utah.

Primary agenda item for this meeting will be a report from the Resource Advisory Council subgroup to the RAC on the status of the Raptor Science Team's report.

The meeting will be held at the Provo Marriott Hotel (Maple Room), 101 West 100 North, Provo, Utah from 9 until 3. From 2:30 p.m.–3 p.m. a public comment period is scheduled where members of the public may address the Council. Written comments may be mailed to the Bureau of Land Management at the address listed below. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, UT 84111; phone (801) 539–4195.

Dated: July 24, 2002.

Robert A. Bennett,

Associate State Director.

[FR Doc. 02–19288 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet Monday, August 26, 2002 from 8 a.m. to 5 p.m. local time, and on Tuesday, August 27, 2002 from 8 a.m. to Noon local time.

ADDRESSES: The Advisory Board will meet at the Marriott Denver Tech Center, 4900 South Syracuse, Denver, CO, 80237.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business August 16, 2002. See

SUPPLEMENTARY INFORMATION section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Nordin, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach *Ms. Nordin* at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, August 26, 2002 (8 a.m.–5 p.m.)

8:00 Call to Order & Introductions

Co-chairs Comments & Housekeeping
Robin Lohnes/Gary Zakotnik
Welcoming Remarks
Ron Wenker/John Fend

8:30 Old Business:

Approval of March 2002 Minutes
Robin Lohnes
BLM Action on March 2002 Recommendations
John Fend
Charter Renewal & 2003 Nominations Update
John Fend
Annual WH&B Specialist Meeting Overview
Tom Pogacnik

Break (10:00 a.m.–10:15 a.m.)

10:15 Ad-Hoc Committee Report on Budget Initiative
Discussion of Proposed Alternatives
Hilleary Bogley, Wayne Burkhardt/Larry Johnson/Gary Zakotnik

12:00 Lunch

1:30 Old Business (continued):

Update on Pending Litigation
John Fend
Discussion on AML High/Low Numbers
John Fend/Tom Pogacnik

Break (2:30 p.m.—2:45 p.m.)

2:45 Old Business (continued)

Update on Immunocontraception Field Applicability
Linda Coates-Markle, National WH&B Research Coordinator
Update on National WH&B Research Strategy
Fertility Control Field Trial Plan
4:00 Public Comments
Robin Lohnes/Janet Nordin
4:45 Recap/Summary
Robin Lohnes
5–6:00 Adjourn
All

Tuesday, August 27, 2002 (8:00 a.m.—12:00 p.m.)

8:00 New Business:

Sonora Desert Proposal (Tentative)
Merle Edsall

Break (9:00 a.m.—9:15 a.m.)

9:15 Board Recommendations
Robin Lohnes
Report to Congress
Robin Lohnes/Gary Zakotnik
Next Meeting/Date/Site

12:00 Adjourn

Robin Lohnes

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations [41 CFR 101-6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on August 26, 2002, at the appropriate point in the agenda. This opportunity is anticipated to occur at 4:00 p.m. local time. Persons wishing to make statements should register with the BLM by noon August 26, 2002, at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. However, if you do not want the BLM to release your name and address in response to a FOIA request, you must state this prominently at the beginning of your comment. BLM will honor your request to the extent allowed by law. BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet_Nordin@blm.gov*. Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: July 26, 2002.

Sharon L. Kipping,

Acting Group Manager, Wild Horse and Burro Group.

[FR Doc. 02–19350 Filed 7–30–02; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–022]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 8, 2002 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1012 (Preliminary) (Certain Frozen Fish Fillets from Vietnam)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 12, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 19, 2002.).
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 26, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–19424 Filed 7–29–02; 11:57 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: New. Needs Assessment for Service Providers of Trafficking Victims Telephone Survey.

The Department of Justice (DOJ), Office of Justice Programs, National Institute of Justice has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by August 2, 2002. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestion, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Tracey Henke, Office of the Assistant Attorney General, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531, or call (202) 307-5933.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New Collection.

(2) Title of the Form/Collection: Needs Assessment for Service Providers of Trafficking Victims Telephone Survey.

(3) Agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number: OJP Form Number 1121. National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Affected public includes agencies and/or organizations who work with victims of trafficking in persons or advocate on their behalf. This collection will gather information related to assessing the needs of service providers who provide assistance to victims of trafficking in persons. The data will then be used to advise the Office of Justice Programs, other federal agencies and their grantees in the development of data-drive programs to serve trafficking victims and ensure that these programs are both responsive and effective in meeting the needs of trafficking victims. Additionally, the information will inform the development of training and technical assistance programs that best meet the identified needs of the field.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 200 respondents will each complete a 1-hour telephone survey.

(6) An estimate of the total public burden (in hours) associated with the collection: An estimate of the total hour burden to conduct this survey is 200 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 23, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–19279 Filed 7–30–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

ETA 203, Characteristics of the Insured Unemployed; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the collection of the ETA 203, Characteristics of the Insured Unemployed. A copy of the proposed information collection request (ICR) can

be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 30, 2002.

ADDRESSES: Thomas Stengle, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Ave. NW., Washington, DC 20210. Phone number: 202–693–2991. Fax: 202–693–3229. (These are not toll free numbers.) E-mail: *tstengle@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 203, Characteristics of the Insured Unemployed, is a once a month snapshot of the demographic composition of the claimant population. It is based on those who file a claim in the week containing the 19th of the month which reflects unemployment during the week containing the 12th. This corresponds with the BLS total unemployment sample week. This report serves a variety of socio-economic needs because it provides aggregate data reflecting unemployment insurance claimants' sex, race/ethnic group, age, industry, and occupation.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0009.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Characteristics of the Insured Unemployed.

OMB Number: 1205–0009.

Agency Number: ETA 203.

Affected Public: State Government.

Cite/Reference/Form/etc: ETA 203.

Total Respondents: 53.

Frequency: Monthly.

Total Responses: 636.

Average Time per Response: .33 hours.

Estimated Total Burden Hours: 212 hours per year.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 24, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 02–19344 Filed 7–30–02; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

SUMMARY: The Chief Information Officer, Finance and Administration Department, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 26, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Information Officer, Finance and Administration Department, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, *e.g.* new, revision extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the new collection of information in the form of Request for Arbitration Panel for Airline System Boards of Adjustment, Request for Public Law Board Member, Arbitration Services—Pay Voucher for Personal Services, Arbitration Services—Official Travel/Referee Compensation Authorization, Neutral's Report of Activity Arbitration Services—Personal Data Sheet and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 26, 2002.

June D.W. King,

Chief Information Officer, Finance and Administration Department, National Mediation Board.

A. Request for Arbitration Panel for Airline System Boards of Adjustment

Type of Review: New Collection.

Title: Request for Arbitration Panel for Airlines System Boards of Adjustment.

Frequency: On occasion.

Affected Public: Airline Carrier and Union Officials.

Reporting and Recordkeeping Hour Burden:

Responses: Estimate about 80 annually.

Burden Hours: 20.

Abstract: Section 183 of the Railway Labor Act, 45 U.S.C., 183, provides that the parties to the labor-management disputes in the airline industry must have a procedure for the resolution of disputes involving the interpretation or application of provisions of the collective bargaining agreement. The Railway Labor Act mentions system board of adjustment or arbitration boards as the mechanism for resolution and is silent as to how the neutral arbitrator is to be selected if the parties are unable to agree on an individual. The National Mediation Board provides panels of arbitrators to help the parties in their selection of an arbitrator.

This form is necessary to assist the parties in this process. The parties invoke the process through the submission of this form. The brief information is necessary for the NMB to perform this important function.

B. Request for Public Law Board Member

Type of Review: New Collection.

Title: Request for Public Law Board Member.

Frequency: On occasion.

Affected Public: Carrier and Union Officials of railroads.

Reporting and Recordkeeping Hour Burden:

Responses: Estimate 15 annually.

Burden Hours: 3.75.

Abstract: Section 153, Second, of the Railway Labor Act, 45 U.S.C. 153, Second, governs procedures to be followed by carriers and representatives of employees in the establishment and functioning of special adjustment boards. These special adjustment boards are referred to as public law boards (board). The statute provides that within thirty (30) days from the date a written request is made by an employee representative or carrier official for the establishment of a board, an agreement establishing such board shall be made. If, however, one party fails to designate a member of the board, the party making the request may ask the NMB to designate a member on behalf of the other party. The NMB must designate the representative who, together with the other party constitute the public board. It will be the task of these two individuals to decide on the terms of the agreement. If these individuals are unable to decide upon the terms, the Railway Labor Act provides that one of these parties may request that the NMB designate a neutral to resolve the remaining matters which are procedural issues. Pursuant to 29 CFR 1207.2, requests for the NMB to appoint either representatives or neutrals must be made on printed forms which may be secured from the NMB.

This form is necessary for the NMB to fulfill its statutory responsibilities. Without this information, the NMB would not be able to assist the railroad labor and management representatives in resolving disputes, which is contrary to the intent of the Railway Labor Act.

C. Arbitration Services—Official Travel/Referee Compensation Authorization

Type of Review: New Collection.

Title: Arbitration Services—Official Travel/Referee Compensation Authorization.

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the NMB shall compensate arbitrators who resolve the resolves under these sections of the Act. The arbitrator must submit a written request, in advance, for authorization to be compensated for work to be performed. The arbitrator must obtain authorization before performing work. This form is the request and is necessary for the NMB to fulfill its financial responsibilities.

D. Arbitration Services—Pay Voucher for Personal Services

Type of Review: New Collection.

Title: Arbitration Services—Pay Voucher for Personal Services.

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the NMB shall compensate arbitrators who resolve the resolves under these sections of the Act. After the work is performed, the arbitrator must submit a written request for compensation. This form is the vehicle used to request compensation and is necessary for the NMB to fulfill its financial responsibilities.

E. Neutral's Report of Activity

Type of Review: New Collection.

Title: Neutral's Report of Activity.

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: Approximately 624 annually.

Burden Hours: 156.

Abstract: Section 153, First and Second of the Railway Labor Act, 45 U.S.C. 153, First and Second, provide that the parties may use an arbitrator to resolve their disputes concerning the application or interpretation of the provisions of a collective bargaining agreement. The NMB must record the decisions rendered by the arbitrators selected by the parties and compensated by the NMB. This form is used to gather that information. This brief information is necessary for the NMB to fulfill its responsibilities under the Railway Labor Act.

F. Arbitration Services—Personal Data Sheet

Type of Review: New Collection.

Title: Arbitration Services—Personal Data Sheet.

Frequency: On occasion.

Affected Public: Arbitrators.

Reporting and Recordkeeping Hour Burden:

Responses: 25 annually.

Burden Hours: 25.

Abstract: Sections 183 and 153 of the Railway Labor Act, 45 U.S.C., 153 and 183, provide for the use of arbitrators in the resolution of disputes concerning the application or interpretation of provisions of a collective bargaining agreement in the airline and railroad industries. The NMB maintains a roster of arbitrators for this purpose. The NMB must have a means for interested individuals to apply for inclusion on this roster. This form is the application for inclusion on the NMB roster. The brief information that the NMB solicits is necessary to perform this responsibility under the Railway Labor Act.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Roland Watkins, Director of Arbitration Services NMB, 1301 K Street NW, Suite 250 E, Washington, DC 20572 or addressed to the e-mail address *arb@nmb.gov* or faxed to 202–692–5086. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D.W. King at 202–692–5010 or via Internet address *king@nmb.gov.* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–19244 Filed 7–30–02; 8:45 am]

BILLING CODE 7550–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Export Highly-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request to amend an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the request to amend a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this amendment request follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application/date received, application number, docket number	Description of material		End use	Country of destination
	Material type	Total qty		
Transnuclear, Inc. July 12, 2002 July 12, 2002 XSNM03171/03 11005236	Highly-Enriched Uranium (93.30%).	Additional 15.0 kg Uranium (13.99 kg U–235).	To fabricate targets for irradiation in the NRU Reactor to produce medical radioisotopes and to extend expiration date to 12/31/03.	Canada.

For the Nuclear Regulatory Commission.

Dated this 24th day of July, 2002, at Rockville, Maryland.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 02–19334 Filed 7–30–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The Federal Salary Council will meet at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations or pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

At this meeting, the Council will receive a briefing on progress made in improving salary surveys conducted for the locality pay program and consider requests for new locality pay areas or proposals to change the boundaries of existing areas. The Council will meet again later this fall to formulate its recommendations for locality pay areas, methodology, and rates for 2004. The meeting is open to the public.

DATES: August 15, 2002, at 10 a.m.

LOCATION: Office of Personnel Management, 1900 E Street NW., Room 5303 (Pendleton Room), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald J. Winstead, Assistant Director for Compensation Administration, Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–0824; or email at *payleave@opm.gov*.

For the President's Pay Agent:

Kay Coles James,

Director.

[FR Doc. 02–19446 Filed 7–29–02; 2:52 pm]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Regulation S–T; OMB Control No. 3235–0424; SEC File No. 270–375.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation S–T sets forth the general rules and regulations for electronic filings. Registrants who have to file electronically are the likely respondents. Regulation S–T is only assigned one burden hour for administrative convenience because it does not directly impose any information collection requirements. The electronic filing requirement is mandatory for all companies required to file electronically. All information provided to the Commission is available to the public for review.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202 Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 23, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19317 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c2–5; SEC File No. 270–195; OMB Control No. 3235–0198; Rule 15Ba2–5 SEC File No. 270–91; OMB Control No. 3235–0088.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 15c2–5 (17 CFR 240.15c2–5) prohibits a broker-dealer from arranging or extending a loan to customers, not subject to Regulation T (12 CFR 220), in connection with the offer or sale of securities unless, before entering the transaction, the broker-dealer: (1) Delivers to the customer a written statement containing specific information concerning the terms, obligations, risks and charges of the loan; (2) obtains from the customer sufficient financial information to determine that the entire transaction is suitable for the customer; and (3) retains on file and makes available to the customer a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by the rule is necessary to execute the Commission's mandate under the Securities Exchange Act of 1934 (''Exchange Act'') to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 50 respondents that require an aggregate total of 600 hours to comply with the rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $24.00 (based on an annual salary of $32,050 for clerical labor plus an additional 35% to account for overhead costs, totaling $43,268), resulting in a total compliance cost of $14,400 (600 hours @ $24.00 per hour).

Although Rule 15c2–5 does not specify a retention period or record keeping requirement under the rule, nevertheless broker-dealers are required to preserve the records for a period no less than six years pursuant to Rule 17a–4(c). The information required under Rule 15c2–5 is necessary for broker-dealers to engage in the lending activities prescribed in the rule. Rule 15c2–5 does not assure confidentiality for the information retained under the rule.[1]

On July 7, 1975, effective July 16, 1975 (*see* 41 FR 28948, July 14, 1975), the Commission adopted Rule 15Ba2–5 (17 CFR 240.15Ba2–5) under the Exchange Act to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the same information required by Form MSD or Form BD. The statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

[1] The records required by Rule 15c2–5 would be available only to the examination of the Commission staff, state securities authorities and the SROs. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. 522, and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

There is approximately 1 respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated 1 annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of approximately $80 (*i.e.,* 4 hours x $20).

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 23, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19318 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–22; SEC File No. 270–202; OMB Control No. 3235–0196.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17a–22 Supplemental Material of Registered Clearing Agencies

Rule 17a–22 under the Securities Exchange Act of 1934 (''Exchange

Act'')[1] requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 generally are registered clearing agencies.[2] The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies, but on average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a–22 to all registered clearing agencies is approximately $5,220. This represents one dollar per filing in postage, or a total of $3,600. The remaining $1,620 (or approximately 31% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses. (The estimated total cost per response is $1.45 per page representing $1.00 per page in postage plus $0.45 for printing, envelopes, and other administrative expenses.)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General Comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

[1] 15 U.S.C. 78a *et seq.*

[2] Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a–22.

Dated: July 24, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19319 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46258; File No. SR–Amex–2002–52]

Self-Regulatory Organizations; the American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change To Establish Anti-Money Laundering Compliance Programs

July 25, 2002.

On June 3, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change would require members and member organizations to establish anti-money laundering compliance programs meeting specific minimum standards. Notice of the proposed rule change was published in the **Federal Register** on June 20, 2002.[3] The Commission received no comments on the proposal.

The Commission has reviewed carefully the Amex's proposed rule change, and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5)[4] of the Act. Section 6(b)(5) requires the rules of a registered national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the Amex's proposal accurately, reasonably, and efficiently implements the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 as it applies to the Amex's members. The Commission also recognizes that anti-money laundering compliance programs will evolve over time, and that improvements to these programs are inevitable as members find new ways to combat money laundering and to detect suspicious activities.

For these reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–Amex–2002–52) be, and hereby is, approved.[6]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19311 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 46075 (June 13, 2002), 67 FR 42086.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(2).

[6] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46252; File No. SR–Amex–2001–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 thereto by the American Stock Exchange LLC Relating to Seven Series of the iShares Trust Based on a Specified U.S. Treasury or Corporate Bond Index

July 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2001, the American Stock Exchange LLC (the ''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 28, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.[3] On July 23, 2002, Amex submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend Amex Rule 1000A (''Index Fund Shares'') to accommodate listing of Index Fund Shares based on indexes of fixed income securities. The proposed rule change will accommodate listing on the Exchange of the following series of the iShares Trust: iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund, and iShares Goldman Sachs Corporate Bond Fund. The text of the proposed rule change is as follows. New text is italicized.

Index Fund Shares

Rule 1000A

(a) No change.

Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified: (1) Index Fund Share. The term ''Index Fund Share'' means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks *or fixed income securities* that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index *or fixed income securities index;* (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, *or a specified portfolio of fixed income securities and/or a cash amount,* with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash *or fixed income securities and/or cash,* with a value equal to the next determined net asset value.

II. Self-Regulatory Organization's Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

Amex Rule 1000A provides standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940 (''1940 Act'') as well as the Securities Act of 1933 (''Securities Act'') and the Exchange Act. The Exchange currently trades over 80 different index funds under Rule 1000A based on various stock indexes, including more than 50 series of the iShares Trust (''Trust''), which is registered with the Commission as an open-end management investment company.

Index Fund Shares are defined in Rule 1000A as securities based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index. The Exchange is proposing to amend this definition to permit listing of index-based fixed income investment products that are not based in any way on a stock index, but instead are based on an index of fixed income securities, which would encompass U.S. government securities and corporate and non-corporate (other than U.S. government) debt securities. As amended, Rule 1000A would accommodate listing of U.S. government debt securities (*e.g.,* securities issued or guaranteed by the U.S. Treasury, an agency or instrumentality of the U.S. government, or by a government-sponsored entity). Other 1940 Act investment products that could be listed under Rule 1000A, as amended, would include Index Fund Shares based on an index of corporate and/or non-corporate debt securities, or an index consisting of U.S. government, corporate and non-corporate debt securities.[5]

The Exchange therefore, proposes to amend Rule 1000A(b) to specify that Index Fund Shares may be: (1) Based on a portfolio of fixed income securities, (2) issued by an investment company in return for a specified portfolio of fixed income securities and/or cash, and (3) redeemed at a holder's request by the investment company, which will pay the redeeming holder fixed income securities and/or cash.

The Exchange proposes to list under Rule 1000A as proposed to be amended the following seven additional series of the Trust, each a ''New Fund'': iShares 1–3 Year Treasury Index Fund; iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, iShares Government/Credit Index Fund, iShares Lehman Corporate Bond Fund, and iShares Goldman Sachs Corporate Bond Fund.

Each New Fund will hold certain fixed income securities selected to correspond generally to the price and yield performance of a specified U.S. Treasury, Government/Credit, or Corporate Bond (each, an ''Underlying Index'') maintained either by Lehman Brothers, or, for the Goldman Sachs Corporate Bond Fund, by Goldman Sachs and Co.[6]

[1] 15 U.S.C 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice, representing Amendment No. 1, replaces the original Rule 19b–4 filing in its entirety.

[4] *See* letter from Michael Cavalier, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission (Amendment No. 2). In Amendment No. 2, the Exchange provided additional information regarding the availability of quote and pricing information relating to U.S. government, corporate and non-corporate (other than U.S. government) debt securities underlying the iShares Trust series that are the subject of this proposal.

[5] Index Fund Shares based on a fixed income securities index are not eligible for listing under the Amex's generic listing criteria (Rule 1000A, Commentary .02). Therefore, the Exchange will file proposed rule changes prior to listing additional series of such Index Fund Shares pursuant to Rule 19b–4 under the Exchange Act.

[6] On June 18, 2002, Goldman, Sachs & Co. announced changes to the Goldman Sachs Index, which underlies the iShares Goldman Sachs Corporate Bond Fund. As of July 1, 2002, the composition of the index will be expanded from 30 to 100 investment grade bonds and the index will be permitted to include more than one bond per

Barclays Global Fund Advisors (the ''Advisor'' or ''BGFA'') is the investment adviser to each New Fund. The Advisor is registered under the Investment Advisers Act of 1940. The Advisor is a wholly owned subsidiary of Barclays Global Investors, N.A. (''BGI''). BGI is a wholly owned indirect subsidiary of Barclays Bank PLC of the United Kingdom.

SEI Investments Distribution Co. (the ''Distributor''), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations (as defined below) of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

a. *Operation of the New Funds*

1. *Investment Objectives.* The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of its Underlying Index. In seeking to achieve its respective investment objective, each New Fund will utilize ''passive'' indexing investment strategies. Each New Fund may fully replicate its Underlying Index, but currently intends to use a ''representative sampling'' strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities (''Component Securities'') of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to a Fund that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the Underlying Index).[7]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of a New Fund's portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogeneous pieces. These subdivisions are sometimes referred to as ''cells.'' A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: (1) Duration, (2) sector, (3) credit rating, (4) coupon, and (5) the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.[8]

According to the Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information—such as dividend payments instead of coupon rates, for example.

According to the Application, the New Funds' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are ''expensive names'' (*i.e.,* bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each New Fund in accordance with changes in the composition of the Underlying Index or to maintain compliance with requirements applicable to a regulated investment company (''RIC'') under the Internal Revenue Code. For example, if at the end of a calendar quarter a New Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange notes, however, that the Advisor does not anticipate that the New Funds would need to make such adjustments, particularly since these New Funds (other than the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund) invest a very large percentage of their assets in U.S. Treasury securities.

The Exchange represents that the Advisor expects that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%). Each New Fund's investment objectives, policies and investment strategies will be fully disclosed in its prospectus (''Prospectus'') and statement of additional information (''SAI''). At least 90% of each of the iShares 1–3 Year Treasury Index Fund, iShares 7–10 Year Treasury Index Fund, iShares 20+ Year Treasury Index Fund, iShares Treasury Index Fund, and iShares Government/Credit Index Fund's assets will be invested in Component Securities of its respective Underlying Index. Each of these New Funds may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the New Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, these New Funds may invest in securities not included in the relevant Underlying Index in order to reflect prospective changes in the relevant Underlying Index (such as future corporate actions and index reconstitutions, additions and deletions). Each of the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund

issuer. *See* Business Wire, June 18, 2002, ''Goldman Sachs Expands Corporate Bond Index to Enhance Market Representation.'' A description of the revised index is publicly available in the Commission's Public Reference Room.

[7] The Commission approved an ''Application'' by The Trust, Advisor and Distributor (''Applicants'') for an Order under Sections 6(c) and 17(b) of the 1940 Act for the purpose of exempting the New Funds of the Trust from various provisions of the 1940 Act with the Commission. *See* Investment Company Act Release No. 25622 (June 25, 2002) (approving File No. 812–12390). The information provided in this Rule 19b–4 filing relating to the New Funds is based on information included in the Application and Order which include additional information regarding the Trust and the New Funds.

[8] As stated in the Application, the Goldman Sachs Index excludes bonds with embedded options. Although the Lehman Indices may include bonds with embedded options, according to the Application the bonds in each Lehman Index (and the respective Deposit Securities and Fund Securities, as defined below) should be liquid and easily tradable because each Lehman Index consists of U.S. Treasury and agency securities and/or liquid corporate and non-corporate bonds. To the extent a particular bond is less liquid than another bond with similar characteristics, the Advisor's representative sampling techniques should permit the Advisor to replace the less liquid bond with a more liquid one. For these reasons, the Advisor does not believe the presence of bonds with embedded options in an Underlying Index, the Deposit Securities, or Fund Securities would have any material impact on the creation/redemption process and the efficiency of the arbitrage mechanism for each New Fund.

generally will invest at least 90% of its assets in Component Securities of its respective Underlying Index. However, each of the iShares Lehman Corporate Bond Fund and the iShares Goldman Sachs Corporate Bond Fund may at times invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents as well as in bonds not included in its Underlying Index, but which the Advisor believes will help the New Fund track its Underlying Index and which are either (i) included in the broader index upon which such Underlying Index is based (*i.e.,* the Lehman Credit Index for the Lehman Credit VLI Index or the Goldman Sachs Investment Grade Index for the Goldman Sachs InvesTop Index); or (ii) new issues entering or about to enter the Underlying Index or the broader index upon which such Underlying Index is based.

b. *Issuance of Creation Unit Aggregations*

1. *In General.* Shares of each New Fund (the ''iShares'') will be issued on a continuous offering basis in groups of 50,000 or more. These ''groups'' of shares are called ''Creation Unit Aggregations.'' The New Funds will issue and redeem iShares only in Creation Unit Aggregations.[9] As with other open-end investment companies, iShares will be issued at the net asset value (''NAV'') per share next determined after an order in proper form is received. The anticipated price at which the iShares will initially trade is approximately $100.

The NAV per share of each New Fund is determined as of the close of the regular trading session on the Amex on each day that the Amex is open. The Trust sells Creation Unit Aggregations of each New Fund only on business days at the next determined NAV of each New Fund.

Creation Unit Aggregations will be issued by each New Fund in exchange for the in-kind deposit of a portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the New Fund's Underlying Index (the ''Deposit Securities''). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each New Fund in exchange for portfolio securities of the New Fund (''Fund Securities'') and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each New Fund. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant (''Authorized Participant''). Authorized Participants, which are required to be Depository Trust Company (''DTC'') participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable New Fund and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the New Fund of the Deposit Securities together with an amount of cash (the ''Balancing Amount'') specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the New Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the ''Deposit Amount''). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a ''Portfolio Deposit.''

The Advisor will make available to the market through the National Securities Clearing Corporation (the ''NSCC'') on each Business Day, prior to the opening of trading on the Amex (currently 9:30 a.m. Eastern Time), the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on information at the end of the previous Business Day) for the relevant New Fund. The Portfolio Deposit will be applicable to a New Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the New Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each New Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant New Fund, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each New Fund to permit or require the substitution of an amount of cash (*i.e.,* a ''cash in lieu'' amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

c. *Availability of Information Regarding iShares and Underlying Indices*

On each Business Day the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the Intra-day Optimized Portfolio Value'' or ''IOPV'') will be calculated by Bloomberg L.P. (''Bloomberg'') every 15 seconds during the Amex's regular trading hours and disseminated every 15 seconds by Bloomberg and by Amex on Consolidated Tape B. Bloomberg will use Bloomberg Generic Prices (''BGN

[9] Each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately $5 million.

Prices'') to reflect changing bond prices and update the IOPV throughout the day. BGN Prices are current prices on individual bonds as determined by Bloomberg using an automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers). BGN Prices are updated throughout the day based on an ongoing analysis of the bid/ask prices submitted by the third-party price contributors. When Bloomberg receives bid/ask prices from a price contributor, the prices are filtered and screened according to pre-determined criteria and set parameters in order to maximize the accuracy of the pricing data. The net result of this process is an individual bond ''price'' based on an analysis of multiple pricing sources. BGN Prices are available on Bloomberg systems, and Applicants expect that the pricing of the Deposit Securities will be transparent to anyone with access to Bloomberg systems.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX,[10] for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. TradeWeb, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.[11]

Pricing information for corporate and non-corporate securities is also available. For instance, real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

[10] *See www.govpx.com.*

[11] *See www.tradeweb.com.*

Retail investors do have access to free intra-day bellwether quotes.[12] The Bond Market Association provides links to price and other bond information sources on its investor web site at *http://www.investinginbonds.com.* In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial websites. Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.,* IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman Sachs.

The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

Each New Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each New Fund will be calculated and disseminated daily. The Amex also intends to disseminate a variety of data with respect to each New Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Amex. The closing prices of the New Funds' Deposit Securities are readily available from published or other public sources, or on-line information services provided by Merrill Lynch, IDC, Bridge, Bloomberg, Lehman Brothers and other pricing services commonly used by bond mutual funds. In addition, the website for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each New Fund: (a) the prior Business Day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV (''Bid/Ask Price''), [13] and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

[12] Corporate prices are available at 20 minute intervals from Capital Management Services at *www.bondvu.com/quotmenu.htm.*

[13] The Bid-Ask Price of a New Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each New Fund's NAV.

d. *Redemption of iShares*

Creation Unit Aggregations of each New Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each New Fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each New Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such New Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the New Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any New Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the ''Creation List'') and which a redeemer will receive from the New Fund (the ''Redemption List''). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the New Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the ''Cash Redemption Payment.'' The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the New Fund. The Trust may also make redemptions in cash in lieu of transferring one or more

Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

e. *Clearance and Settlement*

The Deposit Securities and Fund Securities of each New Fund will settle via free delivery through the Federal Reserve system for U.S. government securities and the DTC for corporate securities and non-corporate (other than U.S. government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the ''CNS System''), (i) iShares of the New Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (T + 3) an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the New Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all of the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. The Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the New Funds' Custodian through DTC, the Trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On T + 3, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the New Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the New Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an ''in-kind'' creation of iShares. In case of a failed delivery of one or more Deposit Securities, the New Funds will hold the collateral until the delivery of such Deposit Security. The New Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the New Funds will be protected from failure to receive Creation Unit Aggregations of iShares because the Custodian will not new effect the New Fund's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations. In order to simplify the transfer agency process and align the settlement of iShares of the New Funds with the settlement of the Deposit Securities and Fund Securities, Applicants plan to settle transactions in U.S. government securities, corporate bonds, non-corporate bonds (other than U.S. Government securities) and iShares on the same T + 3 settlement cycle. Amex represents that according to the Application, the clearance and settlement process will not affect the arbitrage of iShares in the New Fund.[14]

f. *Dividends and Distributions*

Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each New Fund. Certain of the New Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each New Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Internal Revenue Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each New Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with amounts received from each New Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the ''Service'') available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

g. *Other Issues*

1. Criteria for Initial and Continued Listing

iShares are subject to the criteria for initial and continued listing of Index

[14] Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, and Michael Milone, Attorney, Division, Commission, on July 17, 2002.

Fund Shares in Rule 1002A. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index.

2. Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the New Funds is $5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the *Amex Company Guide* will be based upon the year-end aggregate number of outstanding iShares in all funds of the Trust listed on the Exchange.

3. Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund Shares, including iShares, as eligible for this treatment. *See* Release No. 34–29063, note 9, (SR–Amex–90–31) regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

4. Rule 190

Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

5. Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to iShares. The Applicants have filed with the Commission's Division of Investment Management a separate request for an exemptive order granting relief from certain prospectus delivery requirements under Section 24(d) of the 1940 Act.[15] Any product description used in reliance on a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto.

6. Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities underlying the index, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[16] In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

7. Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Funds and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

8. Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

[15] *See* Investment Company Act Release No. 25595 (May 29, 2002), 67 FR 38684 (June 5, 2002) (Notice of Application for iShares, Inc., the Advisor, the Distributor, and the Trust). The Commission has granted such prospectus relief. *See* Investment Company Act Release No. 25623 (June 25, 2002).

[16] *See* Amex Rule 918C.

9. Surveillance

Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Index Fund Shares currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the New Funds. If the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining), or calculating the underlying Index, it would be required to erect and maintain a "Fire Wall" in a form satisfactory to the Exchange to prevent the flow of information regarding the underlying index from the index production personnel and index calculation personnel to the sales and trading personnel. The Exchange will implement surveillance procedures to monitor and prevent the misuse of material, non-public information in connection with the indices.

10. Hours of Trading/Minimum Price Variation

The New Funds will trade on the Amex until 4:15 p.m. (Eastern time). The minimum price variation for quoting will be $0.01.

Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–35 and should be submitted by August 21, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that implementation of the proposed rule change is consistent with the requirements of Section 6 of the Exchange Act [17] and the rules and regulations thereunder applicable to a national securities exchange.[18] Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Exchange Act.[19] The Commission believes that the Exchange's proposal to list and trade fixed income ETFs will provide investors with a convenient way of participating in the U.S. government, corporate and non-corporate (other than U.S. government) fixed income markets. The Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of stocks. The Commission believes that the availability of the New Funds will provide an instrument for investors to achieve desired investment results that correspond generally to the price and yield performance of the underlying U.S. Treasury, Government/Credit, or Corporate Bond Index. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of the underlying index based on fixed income securities. Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[20]

iShares Trust and iShares, Inc. are each registered in the 1940 Act as an open-ended management investment company with multiple series. iShares Trust has created (or identified for creation) 66 separate series, while iShares, Inc. has created (or identified for creation) 35 separate series. All of these series operate (or will operate) as ETFs pursuant to six prior exemptive orders from the 1940 Act, and each of the ETFs seeks to match the return of an equity securities index. Additionally, the Commission has granted the New Funds appropriate relief under various sections of the 1940 Act, including sections 6(c) and 17(b), so that each New Fund may register under the 1940 Act as an open-end fund and issue shares that are redeemable in Creation Units, shares of New Funds may trade in the secondary market at negotiated prices, and certain persons affiliated with a New Fund by reason of owning 5% or more, and in some cases more than 25%, of its outstanding securities may do in-kind purchases and redemptions of Creation Units.[21]

Barclays is registered as an investment adviser under the 1940 Act and serves as the investment adviser to the series of iShares Trust and iShares, Inc. Distributor acts as the principal underwriter and distributor for iShares Trust and iShares, Inc.

IShares Trust will create seven new series each of which operates as an ETF seeking to match the performance of a fixed income securities index. The seven indices are the following:

- Lehman Brothers 1–3 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 1 and 3 years);
- Lehman Brothers 7–10 Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of between 7 and 10 years);
- Lehman 20+ Year U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 20 years);
- Lehman U.S. Treasury Index (containing U.S. Treasury securities with remaining maturities of more than 1 year);
- Lehman Government/Credit Index (containing certain investment grade government and credit securities with maturities of more than 1 year);
- Lehman Credit VLI Index (containing the largest issues of investment grade credit securities with remaining maturities of more than 1 year); and
- Goldman Sachs InvesTop Index (containing the 100 most liquid and representative bonds in the U.S. investment grade corporate market with remaining maturities of at least 3 years).[22]

The Commission notes that this is the first ETF based on an underlying index of fixed income securities (''Fixed Income ETFs''). The New Funds will operate in substantially the same manner as Equity ETFs. Like many other ETFs, each New Fund will use a representative sampling strategy to track its index. With a sampling strategy, a New Fund will seek to match the return of its index by holding some, but not all, of the fixed income securities contained in its underlying index. In constructing the portfolio for a New Fund, Barclays will select a sample of bonds that will correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the underlying index as a whole. Barclays may also exclude less liquid bonds in order to create a more tradable portfolio to enhance arbitrage efficiency. As with its Equity ETFs, Barclays represents that the New Funds will have a tracking error relative to the performance of their respective underlying indices of no more than 5%.

Shares of the New Funds will be issued and redeemed in Creation Units priced at NAV in exchange for Portfolio Deposits and Redemption Baskets consisting of Bonds selected and announced by Barclays at the beginning of each business day.

The Commission finds that the New Funds will provide benefits to investors in allowing investors to trade baskets of bonds in a single transaction at a cost comparable to that of trading existing

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[21] Investment Company Act Release No. 25622 (June 25, 2002).

[22] As of July 1, 2002, the composition of the Goldman Sachs Index, which underlies the iShares Goldman Sachs Corporate Bond Fund, will be expanded from 30 to 100 investment grade bonds, and the index will be permitted to include more than one bond per issuer.

equity securities and will allow investors to trade baskets of bonds throughout the day and thereby permit them to take advantage of (or protect themselves against) intra-day market movements. The New Funds may make it easier for individual investors to diversify their portfolios across a broader range of assets and will provide institutional and other large investors with an alternative to futures for various hedging and other investment strategies that involve fixed income securities. Finally, the New Funds will provide investors with a fund product that discloses its portfolio on a daily basis rather than semi-annually.

While the New Funds will be operated in a manner that closely parallels the manner in which Equity ETFs are operated, one key potential difference may be the efficiency of the arbitrage process. The arbitrage mechanism for Equity ETFs generally has caused the market price of ETF shares to track closely the NAV of the ETF shares. With respect to liquidity of the debt securities likely to be in the ETF portfolios, to the extent these debt securities could not be readily purchased and sold, the arbitrage process would be less efficient. However, the Commission notes that the New Funds will invest in some of the most liquid debt securities, including U.S. Government securities and investment grade corporate and non-corporate bonds.[23] In addition, Barclays will employ a sampling method of portfolio management that would allow the New Funds to exclude any bonds contained in an underlying index that may not have sufficient liquidity for easy trading. As a result, the Commission believes that the New Funds have addressed the liquidity issues that might hamper arbitrage.

In addition, differences in the degree of price transparency in the debt and equity markets could lead to larger discounts and premiums for the New Funds than have been experienced by Equity ETFs. Specifically, because the pricing of debt securities can be less transparent than the pricing of equity securities, arbitrageurs might account for pricing uncertainty by waiting for greater premiums or discounts to develop in the market price of the ETF shares before engaging in arbitrage transactions.

The Commission finds that because of the nature of the particular debt securities to be included in the portfolios of the New Funds (*i.e.,* U.S. Government securities and investment grade corporate and non-corporate bonds), the pricing information should be available. The Exchange has indicated that real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The Exchange has also represented that retail investors would have access to free intra-day bellwether quotes.[24] For instance, the Bond Market Association provides links to price and other bond information sources on its investor web site at *http://www.investinginbonds.com.* In addition, transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial websites. Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.,* IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman Sachs & Co.

The Commission also believes that pricing information for the Treasury securities should also be available. Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG.

Amex represents that it will disseminate every 15 seconds a price calculated by Bloomberg reflecting the current value of the Portfolio Deposit on a per ETF share basis for the New Funds. To calculate this intra-day value, Bloomberg intends to use Bloomberg Generic Prices, which are current prices for individual bonds as determined by Bloomberg using an automated pricing program that analyzed multiple bond prices contributed by third-part price contributors such as broker-dealers.[25] According, Amex believes that the pricing of the bonds included in the Portfolio Deposit (and in the Redemption basket) will be transparent to anyone with access to Bloomberg systems. Because the arbitrageurs of ETF shares are generally large institutional investors, including broker-dealers, the Commission believes that these investors likely will have access to Bloomberg systems, as well as other bond pricing information sources that should permit efficient arbitrage to occur. While the Commission believes that differences in the liquidity and pricing transparency of the underlying fixed income markets, as compared to the equity markets, may result in the New Funds trading at slightly higher discounts and premiums, the Commission does not believe that this effect is likely to be so substantial as to undermine the benefits that New Funds will provide to the markets and to investors. The Commission expects the Exchange to review the discounts or premiums for these products and to respond appropriately if there is in fact a significant pricing disparity.

The Commission has also granted the issuer, Barclays, exemptive relief from Section 24(d) of the 1940 Act so that dealers may effect secondary market transaction in Barclays ETF shares without delivery a prospectus to the purchaser. Instead, under the exemption and under Amex's listing standards, sales in the secondary market must be accompanied by a ''product description,'' describing the ETF and its shares.[26] The Commission believes a product description, which not only highlights the basic characteristics of the product and the manner in which

[23] The Lehman Government/Credit Index, Lehman Credit VLI Index, and Goldman Sachs InvesTop Index may include investment grade corporate and non-corporate bonds issued by non-U.S. issuers (sovereign, supra-national, foreign agency, and foreign local government). In Barclays' 1940 Act Application, it stated that these bonds will be dollar denominated, registered for sale in the U.S., and traded on U.S. markets at negotiated and readily available prices. Barclays does not believe that these bonds present any unique pricing or liquidity issues and does not expect the bonds to negatively affect arbitrage efficiency. The Commission notes that if any of these major characteristics of these fixed income indices (*e.g.,* investment grade, face amount issued, maturity classification) were to materially change, the Commission would expect Amex to amend these listing standards accordingly.

[24] Corporate prices are available at 20 minute intervals from Capital Management Services at *http://www.bondvu.com/quotmenu.htm.*

[25] The Lehman Indices and the Goldman Sachs Index will not be calculated or disseminated intra-day. The value and return of each Lehman Index is updated on a daily basis by Lehman Brothers. The value and return of the Goldman Sachs Index is updated on a daily basis by Goldman Sachs.

[26] Recently approved Nasdaq listing standards for ETFs clarify that NASD members trading equity ETFs through electronic communication networks (''ECNs'') would be subject to NASD Rules 4420(i)(2) and 4420(j)(2) requiring the delivery of product descriptions in connection with sales of ETF shares. *See* Securities Exchange Act Release No. 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002). The Commission expects NASD members to observe the same standards for the secondary market trading of New Funds.

the ETF shares trade in the secondary market, but also highlights the differences of the New Fund from existing equity ETFs and notes the unique characteristics and risks of this product, should provide market participants with adequate notice of the salient features of the product.

The Commission also notes that upon the initial listing of any ETF under Amex Rule 1000A the Exchange issues a circular to its members explaining the unique characteristics and risks of the security; in this instance, Fixed Income ETFs. In particular, the circular should include, among other things, a discussion of the risks that may be associated with the New Funds, in addition to details on the composition of the fixed income indices upon which they are based and how each New Fund would use a representative sampling strategy to track its index. The circular also should note Exchange members' responsibilities under Exchange Rule 411 (''know your customer rule'') regarding transactions in such Fixed Income ETFs. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[27] The circular also will address members' prospectus delivery requirements as well as highlight the characteristics of purchases in New Funds, including that they only are redeemable in Creation Unit size aggregations. Based on these factors, the Commission finds that the proposal to trade the New Funds is consistent with Section 6(b)(5) of the Exchange Act.[28]

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Index Fund Share listing standards in Amex Rule 1000A, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the New Funds.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including New Funds. New Funds will be deemed equity securities subject to Amex rules governing the trading of equity securities. These rules include: General and Floor Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Rule 117, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, and handling of orders and reports;[29] Office Rules, such as conduct of accounts, margin rules, and advertising; [30] and Contracts in Securities, such as duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans.[31] The Amex also will consider halting trading in any series of Index Funds Shares under certain other circumstances including those set forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the New Funds.

The Commission also notes that certain concerns are raised when a broker-dealer, such as Lehman or Goldman, is involved in the development, maintenance, and calculation of an index upon which an ETF is based.

Goldman and Lehman have represented that each have procedures in place to prevent the misuse of material, non-public information relating to the index.[32] The Commission believes that these provisions should help to address concerns raised by Goldman and Lehman's involvement in the management of the indices. The Commission believes that this should act to further minimize the possibility of manipulation.

The Commission also believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the New Funds, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

Amex has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because the 1940 Act Application relating to the New Funds has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.[33] The Application disclosed the characteristics and risks associated with New Funds. No comments were submitted and the Commission granted the relief requested in the Application.[34] The New Funds will trade on the Exchange in the same manner as Index Fund Shares previously approved by the Commission. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[35] that the proposed rule change, (File No. SR–Amex 2001–35), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[36]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19314 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[27] Amex Rule 411.

[28] 15 U.S.C. 78f(b)(f).

[29] Amex Rules 1–236.

[30] Amex Rules 300–590.

[31] Amex Rules 700–891.

[32] The Commission expects that the procedures implemented by Goldman and Lehman will monitor and prevent the misuse of material, non-public information as it relates to the development, maintenance and calculation of the indices.

[33] Investment Company Act Release No. 25594 (May 29, 2002), 67 FR 38681 (June 5, 2002).

[34] Investment Company Act Release No. 25622 (June 25, 2002).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.3–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46251; File No. SR–Amex–2002–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Trading of Trust Issued Receipts and ''Other Securities''

July 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 8, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 3, 2002 (''Amendment No. 1''). Amendment No. 1 deleted a proposed technical change to Amex Rule 958.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 958, Commentary .10 relating to trading by regular members in securities listed pursuant to Section 107 of the Amex Company Guide (*Other Securities*) and Rule 1200 (*Rules of General Applicability*; Trust Issued Receipts). The text of the proposed rule change follows. Proposed new language is in italics; proposed deletions are in brackets.

Rule 958

* * * *

Commentary

* * * *

.10 Transactions on the Floor in index warrants [and], currency warrants*, securities listed pursuant to Section 107 of the Company Guide (''Other Securities''), and Trust Issued Receipts listed pursuant to Rules 1200 et seq. which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule, and shall only be effected* by Registered Traders who are regular members. [, and] [t]*T*ransactions by Registered Traders on the Floor in derivative products (as defined in Article I, Section 3(d) of the Exchange Constitution) which are otherwise traded under the Exchange's equity trading rules, shall be effected in accordance with the provisions of this rule. In addition, Rule 111, Commentary .01 shall not apply to such transactions. (See Rule 111, Commentary .12 and Rule 114, Commentary .14.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1992, the Commission approved Rule 958, Commentary .10 relating to trading on the Floor in ''derivative products,'' index warrants and currency warrants.[4] Commentary .10 requires that these securities be traded by Registered Traders under Rule 958, which relates to trading by Registered Options Traders (''ROTs''). Commentary .10 also states that index warrants and currency warrants may be traded by ROTs who are regular members. Options Principal Members (''OPMs'') and Limited Trading Permit Holders (''LTPs'') are permitted to trade derivative products under Rule 958, but are not permitted to trade index or currency warrants. All of these securities must be traded under Rule 958 only and cannot be traded by Registered Equity Traders (''RETs'') or Registered Equity Market Makers (''REMMs'') under Rules 111 or 114.[5] ''Derivative Products'' traded by Registered Traders under Rule 958 include all exchange-traded funds listed under Amex Rules 1000 and 1000A, including, for example, Nasdaq 100 Index Tracking Stock™, SPDRs®, DIAMONDS®, iShares™, and Select Sector SPDRs®.

Pursuant to Rule 958, Commentary .10, regular members trading derivative products, index warrants and currency warrants as ROTs are subject to continuous market making obligations. As such, ROTs receive market maker margin. OPMs and LTPs are permitted to trade derivative products pursuant to Article I, Section 3 and Article IV, Section 1(h), respectively, of the Exchange Constitution, and, because their trading under Rule 958 also requires ongoing market making obligations, OPMs and LTPs also receive market maker margin.[6]

When the Exchange first authorized trading in derivative products by OPMs and LTPs in 1990, the Exchange specifically intended to encourage trading crowds and competitive market making to develop in such products as SuperTrust securities (which represented interests in actual portfolios of securities such as the S&P 500 Index) and SPDRS®, which were then under development by the Exchange. In the Exchange's Rule 19b–4 filing with the Commission to authorize such OPM and LTP trading, the Exchange stated that the definition of derivative products was not intended to include products that OPMs and LTPs are not entitled to trade currently, including currency warrants, index warrants, or closed end mutual funds.[7]

The Exchange proposes to amend Rule 958, Commentary .10 to clarify that ''structured products'' and Trust Issued Receipts (HOLDRS℠) traded under Amex equity trading rules must be traded under Rule 958 and only by registered traders who are regular members. Structured products include all securities listed under Section 107 of the Amex Company Guide (*e.g.*, Index-Linked Notes (MITTS®, BOXES℠, TIERS℠); Equity-Linked Term Notes (*e.g.*, GOALS, ELKS℠, SPARQS℠, STRIDES℠) and Trust Preferred Securities (*e.g.*, TOPrS)). Trust Issued Receipts include HOLDRS℠ and are listed under Rules 1200 *et seq.* Therefore, these securities would not be eligible to be traded by OPMs or LTPs, or by RETs or REMMs under Rules 111 and 114. The Exchange believes that permitting regular member ROTs to trade structured products and HOLDRS℠ under Rule 958 will promote additional market depth and liquidity. These securities do not fall within the definition of ''derivative products'' as contemplated by the Exchange in authorizing OPMs and LTPs to trade derivative products, and, therefore, OPMs and LTPs are not permitted to trade these securities listed under Section 107 of the Company Guide or Rule 1200. The Exchange is therefore amending Rule 958, Commentary .10 to clarify this position.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect

[4] Securities Exchange Act Release No. 30768 (June 2, 1992), 57 FR 24277 (June 8, 1992) (File No. SR–Amex–92–06).

[5] The term ''derivative products'' is defined in Article I, Section 3(d) of the Exchange Constitution to include ''standardized options and other securities issued by the Options Clearing Corporation or another limited purpose entity or trust, and which are based solely on the performance of an index or portfolio of other publicly traded securities.'' The definition explicitly excludes warrants of any type and closed end funds.

[6] OPMs also can trade stock options and index options. LTPs can trade index options but not stock options. As previously mentioned, OPMs and LTPs also may trade derivative products, but are not permitted to trade index or currency warrants. Derivative products cannot be traded by persons registered as RETs or REMMs under Rules 111 or 114. REMMs are not subject to Rule 958 type continuous market making obligations and do not receive ''good faith'' market maker margin, but instead are subject to full customer margin requirements.

[7] *See* Securities Exchange Act Release No. 28612 (November 14, 1990), 55 FR 48308 (November 20, 1990) (File No. SR–Amex–90–17).

[8] Amendment No. 1. The exchange also originally proposed a technical change to Amex Rule 958. The change is unnecessary because it was previously proposed by the Amex and approved by the Commission. (*See* Securities Exchange Act Release No. 45320 (January 18, 2002), 67 FR 3921 (January 28, 2002) (File No. SR–Amex–2001–79).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the amended proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of the proposed rule change and Amendment No. 1 will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–50 and should be submitted by August 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19315 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46255; File No. SR–CHX–2002–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

July 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2002, the Chicago Stock Exchange, Incorporated (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the ''Schedule'') to include a new tape credit for lead market makers in cabinet securities. The text of the proposed rule change follows. Proposed new language is in italic.

Membership Dues and Fees

A.–L. No change to text.

M. Credits

1. Specialist Credits

No change to text.

2. Floor Broker Credits

No change to text.

3. Credits for Qualified Market Makers Registered in Cabinet Securities

Effective July 1, 2002, total monthly fees owed by a market maker registered in a cabinet security will be reduced (and qualified market makers will be paid each month for any unused credits) by a Transaction Credit. ''Transaction Credit'' when used in connection with a credit for a Qualified Market Maker registered in a cabinet security means 18% of the monthly CHX tape revenue from the Consolidated Tape Association generated by the security in which the market maker is registered. To the extent that CHX tape revenue is subject to a year-end adjustment, market maker credits may be adjusted accordingly. ''Qualified Market Maker'' means a lead market maker who is registered as such in 100 or more cabinet securities.

N. No change to text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule to include a new tape credit for lead market makers in cabinet securities. Under Article XXXIV of the Exchange's Rules, a market maker can be appointed to disseminate continuous two-sided quotations in issues that are not assigned to a specialist firm.[3] The first market maker to assume that role in a particular issue is considered the ''lead'' or ''primary'' market marker.[4] Issues in which a lead market maker disseminates a continuous two-sided market are often traded by the Exchange's floor brokers, but are not traded through the Exchange's MAX® system, its automated order routing and execution system.

The Exchange has proposed this rule change to reward lead market makers who undertake that role for a significant number of cabinet securities by implementing an 18% tape credit with respect to those issues.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Article XXXIV, Rule 3, Interpretation .02.

[4] Article XXXIV, Rule 3, Interpretation .02(6).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, in that it provides for equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to the File No. SR–CHX–2002–21 and should be submitted by August 21, 2002.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(e)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19313 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46248; File No. SR–NASD–2002–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Manning Pilot on the OTCBB

July 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. On July 19, 2002, the NASD submitted Amendment No. 1 to the proposal.[4] The Commission is publishing this amended notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Jeffrey S. Davis, Nasdaq, to Nancy Sanow, Division of Market Regulation, Commission, dated July 19, 2002 (''Amendment No. 1''). In Amendment No. 1, the NASD made certain technical corrections to the narrative description of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This is a proposal to extend through December 15, 2002, two pilot programs contained in NASD Rule 6541, which prohibits member firms from trading ahead of customer limit orders in designated OTC Bulletin Board (''OTCBB'') securities. NASD Rule 6541 was established on a pilot basis through February 8, 2002. Portions of NASD Rule 6541 were separately amended for a pilot period that originally ran for a three-month period from August 1, 2001, to November 1, 2001. This pilot period was extended through January 14, 2002, and again until July 15, 2002. Nasdaq is proposing no changes to the language of NASD Rule 6541.

Pursuant to Rule 19b–4(f) under the Act, Nasdaq has designated this proposal as non-controversial and has provided the Commission with the 5-day notice required by Rule 19b–4(f)(6)(iii). Nasdaq has requested that the Commission waive the 30-day pre-operative requirement contained in Rule 19b–4(f)(6)(iii). If such waiver is granted by the Commission, the two pilots programs would continue in effect until December 15, 2002.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 8, 2001, the Commission approved new NASD Rule 6541 which, on a pilot basis, extended the basic customer limit order protection principles—that presently apply to Nasdaq securities—to designated securities traded on the OTCBB.[5] NASD Rule 6541(a), in general, prohibits member firms that accept customer limit orders in these securities from ''trading

[5] *See* Securities Exchange Act Release No. 43944 (February 8, 2001), 66 FR 10541 (February 15, 2001) (approving SR–NASD–00–22).

ahead'' of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. NASD Rule 6541(b) requires member firms to provide a minimum level of price improvement to incoming orders in OTCBB securities if the firm chooses to trade as principal with those incoming orders while holding customer limit orders. If a member firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders.

The limit order protection embodied in NASD Rule 6541 is an investor protection tool based on NASD IM–2110–2 (commonly known as the ''Manning Rule''). In the *Manning* case, the NASD found and the Commission affirmed that a member firm that accepts a customer limit order has a fiduciary duty not to trade for its own account at prices more favorable than the customer order.[6] NASD Rule 6541 expands to the trading of OTCBB the protections that NASD IM–2110–2 provides to the trading of Nasdaq National Market and SmallCap securities.

On March 2, 2001, and April 6, 2001, the Commission approved modifications to NASD IM–2110–2.[7] In general, these modifications narrowed the amount of price improvement required to avoid the obligation to fill a customer limit order, in recognition of the introduction of decimal pricing of Nasdaq securities. On July 26, 2001, Nasdaq filed and implemented an amendment to NASD Rule 6541(b) (SR–NASD–2001–39) that likewise narrowed the amount of required price improvement for trading of OTCBB securities.[8] As originally drafted, NASD Rule 6541(b) required price improvement of at least the lesser of $0.05 or one-half of the current inside spread. Under SR–NASD–2001–39, the price improvement requirement was narrowed to $0.01 or one-half the inside spread (whichever is less) for a market maker wishing to trade in front of a held customer limit order that is priced at or inside the current inside spread for an OTCBB security. For a customer limit order priced less than $0.01 outside the inside spread, however, SR–NASD–2001–39 required a market maker seeking to trade in front of such limit order to execute its trades at a price at least equal to the inside bid (with respect to a held customer limit order to buy) or inside offer (for a held order to sell). Moreover, SR–NASD–2001–39 provided that limit order protection would not apply to a customer limit order that was priced more than $0.01 outside the current inside spread. The amendment to NASD Rule 6541(b) adopted by SR–NASD–2001–39 was effective for a three-month pilot period that ended on November 1, 2001.

At the expiration of that period, Nasdaq amended Rule 6541(b) to eliminate the minimum price improvement requirement for limit orders outside the inside spread.[9] Accordingly, any degree of price improvement would relieve a market maker from the obligation to fill a limit order that is outside of the inside spread. At the same time, Nasdaq eliminated the provision of the pilot that provided no limit order protection to customer limit orders that are priced more than $0.01 outside the current inside spread. Thus, the basic prohibition on trading ahead of a customer limit order at a price equal or superior to the limit order, without filling the limit order, applies to all limit orders in OTCBB securities covered by NASD Rule 6541. The amount of required price improvement for limit orders priced inside the current inside spread remained the lesser of $0.01 or one-half of the current inside spread.

Nasdaq believes that a six-month extension of both existing pilot programs is necessary to allow Nasdaq to complete its analysis of the impact of NASD Rule 6541 on trading in this market. Currently, it is Nasdaq's intent to implement limit order protection on a permanent basis at or before the end of this pilot extension.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act[11] in general, and Section 15A(b)(6) of the Act[12] in particular, in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) maintain the current rule language without a lapse, in keeping with the public interest and the protection of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by Nasdaq as a non-controversial rule change pursuant to Rule 19b–4(f)(6) under the Act. Nasdaq represents that the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; therefore, it has become immediately effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

Nasdaq has requested that the Commission waive the 30-day pre-operative period required by Rule 19b–4(f)(6), which would allow the proposal to become operative immediately. The Commission believes that continuing the two pilot programs will further the aim of protecting investors and the

[6] *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988) (''Manning'').

[7] *See* Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001) (approving SR–NASD–2001–09); Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (approving SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 44529 (July 9, 2001), 66 FR 37082 (July 16, 2001) (SR–NASD–2001–43).

[8] *See* Securities Exchange Act Release No. 44593 (July 26, 2001), 66 FR 40304 (August 2, 2001).

[9] *See* Securities Exchange Act Release No. 45011 (November 1, 2001), 66 FR 56587 (November 8, 2001) (SR–NASD–2001–78).

[10] The Commission notes that permanent approval of limit order protection for OTCBB securities would require the NASD to submit a proposed rule change to this effect under Section 19(b) of the Act, 15, U.S.C. 78s(b).

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C 78s(b)(3)(A).

[14] Because the NASD amended the proposed rule change, the 60-day abrogation period runs from the date of filing of the amendment (July 19, 2002) rather than the date of filing of the original submission (July 16, 2002).

public interest.[15] Accordingly, the Commission hereby grants Nasdaq's request.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–95 and should be submitted by August 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19316 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46257; File No. SR–OCC–2002–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Providing Clearing Services to Options Exchanges That Are Not Stockholders

July 25, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 25, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on July 9, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's by-laws and rules in order that OCC could provide clearing services to new options exchanges without having those exchanges become stockholders of OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to allow OCC to provide clearing services to new options exchanges without issuing new equity to such exchanges. Under OCC's existing by-laws, any new options market desiring to clear options transactions through OCC is required to purchase common stock in OCC and to execute the Stockholders Agreement to which the existing stockholder exchanges are parties. Management of OCC has concluded that the practice of issuing new equity to each market for which it provides clearing services is no longer either necessary or appropriate. Indeed, the practice has already been abandoned with respect to providing clearing services to markets trading only security futures or commodity futures.[3] The present rule change would permit OCC to clear options transactions for additional exchanges on a similar basis. OCC believes that there is no more reason to permit or require new options exchanges to become OCC stockholders than to permit or require those other markets to do so.

Exchange ownership of clearing organizations is not required under Section 17A of the Act or of any other provision of the federal securities laws. State law at one time made such ownership necessary. Article VIII of the Uniform Commercial Code (''UCC''), as in effect in Illinois prior to the 1973 amendment, defined a ''clearing corporation'' as ''a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934.''[4] The UCC as now in effect in all U.S. jurisdictions no longer defines ''clearing organization'' in terms of ownership, and therefore, the UCC is no longer a constraint in determining the ownership of OCC.

Not only is there no continuing need to have new markets seeking clearing services become stockholders, there are a number of reasons not to do so. First, increasing the number of Class A and Class B stockholders could adversely affect OCC's ability to pursue new business opportunities.[5] Stock ownership gives the existing participant exchanges the right to a representative on OCC's board of directors and veto rights over certain significant transactions (*e.g.,* a merger) or amendments to certain provisions of the constituent documents (*e.g.,* Article VII of the by-laws regarding exchange qualifications). The participant exchanges have divergent and sometimes conflicting interests, and this will only become more prevalent as the number and types of options exchanges proliferates. Expanding the number of stockholders with veto rights increases the likelihood that a single stockholder might block action that is in the best interests of OCC and its other stockholders. Second, continuing to add

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Article XII of the by-laws permits OCC to clear ''security futures exchanges'' without issuing equity to such exchanges and permits OCC to provide clearing services for other futures products on the same basis (Securities Exchange Act Release Nos. 44434 (June 15, 2001), 66 FR 33283 [File No. SR–OCC–2001–05] and 45946 (May 16, 2002), 67 FR 36056 [File No. SR–OCC–2001–16]).

[4] The 1973 amendment identified certain other entities that could be owners of a clearing corporation while retaining securities exchanges or associations among the permitted owners.

[5] Holders of OCC Class A common stock have the right, by majority vote, to elect member directors of OCC. Holders of Class B common stock vote on the election of the management director and exchange directors of OCC. In addition, the votes of Class B common stock holders are required to amend OCC's certificate of incorporation, to adopt an agreement of merger or consolidation of OCC with or into any other corporation, to authorize or consent to the sale, lease, or exchange of all or substantially all of the property and assets of OCC, to authorize or consent to the dissolution of OCC, to receive dividends, to receive assets upon partial or final liquidation or dissolution of OCC.

Class A and B stockholders could soon result in substantial increases in the size of the OCC board. After the number of exchange directors reaches seven, each addition of an exchange director would require the addition of another member director in order to maintain the allocation between member directors and exchange directors called for under OCC's constituent documents. Ultimately, the OCC board could reach an unwieldy size. Finally, issuing additional Class A and Class B common stock for each new market would continually dilute the interests of the existing participant exchanges.

OCC proposes instead to create a new category of ''non-equity exchange'' to which markets that desire options clearing services from OCC would be admitted. In lieu of purchasing common stock of OCC, new participant exchanges would be required to enter into a Noteholders Agreement and to purchase a promissory note from OCC in the principal amount of $1 million, which is the amount currently specified in Article VII, Section 2 of the by-laws as the maximum purchase price for additional equity currently required to be purchased by a new equity exchange. Instead of the equity interest received by such equity exchanges, non-equity exchanges would receive promissory notes bearing an interest rate return on their investments as described below.

Non-equity exchanges will be subject to admission requirements identical to those imposed on the current participant exchanges that hold equity. Among other things, new participant exchanges must be registered under the Act and must be in compliance with the rules promulgated thereunder by the Commission and must furnish information to OCC concerning such things as the exchange's operations, management, rules, and membership.

OCC will provide clearing services to non-equity exchanges on the same basis that it provides services to the equity exchanges. Non-equity exchanges would become parties to the existing Restated Participant Exchange Agreement in the same way that new participant exchanges have done in the past. No modification to the agreement is necessary because it does not address matters relating to an exchange's role as stockholder, which are confined to the Stockholders Agreement.

The rights of the existing participant exchanges as stockholders, including their rights to representation on OCC's board and their veto rights, have been preserved in Article VIIA relating to equity exchanges. Although non-equity exchanges will not have representation on OCC's board, their members that are clearing members of OCC would be ''participants'' in OCC within the meaning of Section 17A(b)(3)(C) of the Act and would be entitled under that provision to ''fair representation . . . in the selection of [OCC's] directors and administration of its affairs.'' Fair representation would be assured because participants that are members of non-equity exchanges would participate in the selection of OCC's member directors on the same basis as members of the equity exchanges.[6]

The Noteholders Agreement proposed in this rule filing contains restrictions on the transfer of promissory notes issued to non-equity exchanges and provides for the repurchase of the notes by OCC under certain circumstances parallel to the provisions applicable to the repurchase of Class A and Class B stock.[7] These provisions are designed to ensure that the promissory notes remain in the hands of participant exchanges of OCC and to give withdrawing exchanges the right to ''put'' the notes back to OCC. The promissory notes will bear interest at a rate determined by reference to provisions of the Internal Revenue Code.[8] The interest rate will be reset annually. Interest will be payable annually in arrears on the promissory note's anniversary date. If a promissory note is repurchased by OCC in less than six years from the date of the initial sale of the note, the purchase price of the note will be the principal amount plus any accrued and unpaid interest less a reduction based on the length of time since initial sale.[9] After six years, there would be no reduction, and the promissory notes would be redeemable at their aggregate principal amount plus any accrued and unpaid interest. Under the terms of Section VIII of the Noteholders Agreement, OCC's obligations to a noteholder are subordinated to the claims of all other creditors of OCC except that the obligation to repurchase a note from any noteholder ranks *pari passu* with OCC's obligations to repurchase notes from any other noteholders and to repurchase Class A or Class B common stock from any stockholder. The provisions of the Noteholders Agreement are generally parallel to corresponding provisions of the Stockholders Agreement.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act because it facilitates the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities and ensures fair representation of participants and stockholders of OCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent

[6] OCC has represented to the Commission that OCC management will (1) provide non-equity exchanges with the opportunity to make presentations to the OCC board or the appropriate board committee upon request and (2) will promptly pass on to non-equity exchanges any information that management considers to be of competitive significance to such exchanges disclosed to exchange directors at or in connection with any meeting or action of the OCC board or any board committee. Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, OCC (July 8, 2002).

[7] The Noteholders Agreement is attached as Exhibit I to OCC's filing.

[8] The interest rate for the promissory notes will be equal to the short-term applicable federal rate for purposes of Section 1274(d) of the Internal Revenue Code of 1986.

[9] The amount of the reduction, which is set forth in the Noteholders Agreement, would be $300,000 if the note is purchased by OCC within two years of its original sell date, $240,000 if more than two years but less than three years, $180,000 if more than three years but less than four years, $120,000 if more than four years but less than five years, and $60,000 if more than five years but less than six years.

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the File No. SR–OCC–2002–02 and should be submitted by August 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19312 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 30, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Randy Christopherson, Director, Denver Finance Center, Small Business Administration, 721 19th Street, Denver, CO. 80202.

FOR FURTHER INFORMATION CONTACT: Randy Christopherson, Director, (313) 844–0054 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Transaction Report Loans Serviced by Lenders.

Form No: 172.

Description of Respondents: Small Business Administration Participating Lenders.

Annual Responses: 25,284.

Annual Burden: 3,865.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–19290 Filed 7–30–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before September 30, 2002.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda Waters, Program Analyst, Office Government Contracting, Small Business Administration, 409 3rd Street, SW., Suite 8800, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Linda Waters, Program Analyst, (202) 205–7315 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Small Business Administration, Application for Certificate of Competency.

Form No: 1531.

Description of Respondents: Small Business Owners.

Annual Responses: 300.

Annual Burden: 2,400.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–19291 Filed 7–30–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3414]

State of New York (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to August 14, 2002.

All other information remains the same, *i.e.,* the deadline for filing applications for economic injury is February 17, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 25, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–19289 Filed 7–30–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4076]

Culturally Significant Objects Imported for Exhibition; *Determinations:* ''Art Through the Ages: Masterpieces of Painting from Titian to Picasso''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, ''Art Through the Ages: Masterpieces of Painting from Titian to Picasso,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Hermitage Museum, Las Vegas, Nevada, from on or about August 30, 2002, to on or about March 2, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: July 25, 2002.

Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–19343 Filed 7–30–02; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Market Access in the Free Trade Area of the Americas Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning market access and other issues in the Free Trade Area of the Americas negotiations.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seeks public comment on the effects of the elimination of tariffs and nontariff barriers to trade and other market liberalization among Free Trade Area of the Americas (FTAA) participating countries and on any other matter relevant to the FTAA agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by August 21, 2002. A hearing will be held in Washington, DC, beginning on September 9, 2002, and will continue as necessary on subsequent days. Written comments are due by noon, September 23, 2002.

ADDRESSES: Submissions by electronic mail:

FR0023@ustr.gov (notice of intent to testify and written testimony);

FR0024@ustr.gov (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at 202/395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Karen Lezny, Deputy Assistant United States Trade Representative for the Free Trade Area of the Americas, (202) 395–5190, or William Busis, Associate General Counsel, (202) 395–3150.

SUPPLEMENTARY INFORMATION:

1. Background

On December 11, 1994, the 34 democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. They agreed to conclude negotiations on the Free Trade Area of the Americas by the year 2005, and to achieve concrete progress toward that objective by the end of the 20th century. Since that time, the 34 Western Hemisphere ministers responsible for trade have met on several occasions.

At a meeting in San Jose, Costa Rica in March of 1998, the trade ministers recommended that the Western Hemisphere leaders initiate the negotiations and provided them recommendations on the structure, objectives, principles, and venues of the negotiations. A month later the 34 leaders initiated the Free Trade Area of the Americas negotiations at the Summit of the Americas meeting in Santiago, Chile. The leaders agreed to the general framework proposed by the 34 trade ministers, which included the establishment initially of nine negotiating groups to be guided by general principles and objectives and specific objectives as agreed by the ministers in March 1998.

The work of the negotiating groups began in September 1998. In anticipation of that activity, the TPSC published a notice in the **Federal Register** requesting public comments (63 FR 128, July 6, 1998) on what should be the U.S. positions and objectives with respect to each of the negotiating groups. This notice also stated that USTR would seek additional public comment separately on other issues related to the FTAA, including the economic effects of the elimination of tariffs and nontariff barriers to trade among FTAA participating countries.

In April 2001, the 34 trade ministers met in Buenos Aires, Argentina and mandated that the market access negotiations be initiated no later than May 15, 2002. The ministers also decided to make public the FTAA preliminary draft consolidated text, which has been posted on the FTAA website at *http://www.ftaa-alca.org.* The TPSC subsequently issued a notice inviting public comments on the draft text (66 FR 36,614, July 12, 2001).

On April 22, 2001, the 34 leaders at the Summit of the Americas meeting in Quebec City, Quebec confirmed that the negotiation of the FTAA Agreement would conclude no later than January of 2005.

In May of 2002 the Vice-Ministers Responsible for Trade in the FTAA countries established methods and modalities for the market access negotiations. Additional details can be found at *http://www.ftaa-alca.org/tn20e.doc.* Initial offers on the elimination of tariff, services, investment and government procurement barriers to trade and investment among FTAA participating countries will be presented between December 15, 2002 and February 15, 2003. Requests for improvements to offers will be presented between February 16 and June 15, 2003. The process for exchanging revised offers will be initiated on July 15, 2003. In addition, the parties are in the process of negotiating commitments concerning intellectual property rights.

2. Public Comments and Testimony

As provided in the regulations of the Trade Policy Staff Committee (15 CFR part 2003), the Chairman of the TPSC invites written comments and/or oral testimony of interested parties at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of an FTAA country, any concession which should be sought by the United States, or any other matter relevant to the FTAA. The TPSC invites comments and testimony on all of these matters, and in light of the schedule for presenting market access offers, in particular seeks comments and testimony addressed to:

(a) Economic benefits and costs to U.S. producers and consumers of the elimination of tariffs on trade between the United States and the 33 other FTAA countries, and in the case of articles for which immediate elimination of tariffs is not recommended, the recommended staging schedule for such elimination.

(b) Existing nontariff barriers to trade in goods between United States and the 33 other FTAA countries and the economic benefits and costs of removing those barriers.

(c) Existing barriers to trade in services and government procurement between the United States and the 33 other FTAA countries and the economic benefits and costs of removing such barriers.

(d) Economic benefits and costs to U.S. producers and consumers of strengthening the protection and enforcement of intellectual property rights (IPR) in FTAA countries and improving market access for products subject to IPR protection.

(e) Existing restrictions on investment flows between United States and the 33 other FTAA countries and the economic benefits and costs of eliminating any such restrictions.

Persons who submitted comments pursuant to a previous request for public comments concerning the FTAA should not resubmit those comments in response to this notice.

A hearing will be held on September 9, 2002, in Rooms 1 and 2, 1724 F Street, NW, Washington, DC 20508. If necessary, the hearing will continue on subsequent days.

Persons wishing to testify at the hearing must provide written notification of their intention by August 21, 2002. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact Gloria Blue.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, September 23, 2002. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter including, as applicable, the product(s) (with HTSUS numbers) or service sector(s).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: ''Free Trade Area of the Americas'' followed by (as appropriate) ''Notice of Intent to Testify'', ''Testimony'', or ''Written Comments.'' Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet server *(http://www.ustr.gov).*

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 02–19372 Filed 7–26–02; 4:30 pm]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–243]

WTO Dispute Settlement Proceeding Regarding United States—Rules of Origin for Textiles and Apparel Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on June 24, 2002, a dispute settlement panel was established at the request of the Government of India under the Marrakesh Agreement Establishing the World Trade Organization (''WTO'') to examine Section 334 of the Uruguay Round Agreements Act (''URAA''), its implementing legislation, and Section 405 of the Trade and Development Act of 2000. India alleges that these U.S. statutes are inconsistent with the obligations of the United States under the Agreement on Rules of Origin (''ARO''). USTR invites written comment from the public concerning the issues raised in this dispute. Bangladesh, China, the European Communities (''EC''), Pakistan and the Philippines have notified the WTO of their intention to participate as third parties.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 26, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0015@usstr.gov,* Attn: ''US-India Textile ROO Dispute'' in the subject line, or (ii) by mail, to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: India Textile ROO Dispute, with a confirmation copy sent electronically or by fax to 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Mélida N. Hodgson, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–3582.

SUPPLEMENTARY INFORMATION: Pursuant to Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on June 24, 2002, a WTO dispute settlement panel was established at the request of India. The Panel, which would hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations within six to nine months after its establishment.

Major Issues Raised and Legal Basis of the Complaint

India alleges that Section 334 (1996), and its modification Section 405 (2000), are inconsistent with certain obligations of the United States under the ARO. Section 334 established certain rules of origin applicable to textile and apparel products to harmonize U.S. practice with that of our trading partners. Section 405 amended Section 334 to resolve certain claims raised by the EC in dispute settlement proceedings challenging our textile rules of origin implementing the URAA.

Specifically, India alleges that Section 334 and Section 405 wrongly differentiated between textile and apparel products and industrial products in order to protect the US industry. India further alleges that Sections 334 and 405 are inconsistent with Article 2(b)–(e) of ARO, because, inter alia: their rules are complex and disrupt and restrict trade; they impose prerequisite conditions not related to manufacturing or processing; discriminate between domestic and WTO Member goods, as well between Member goods; and are not administered in a consistent, impartial manner.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above or transmit a copy electronically to *FR0015@ustr.gov,* with ''India Textile ROO Dispute'' in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to 202–395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel, and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–243, US-India Textile ROO Dispute) may be made by calling the Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Bruce R. Hirsh,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–19282 Filed 7–30–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–12690]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0139, 2115–0035, 2115–0598, 2115–0556, and 2115–0111

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise (1) Ships' Stores Certification for Hazardous Materials Aboard Ships; (2) Report of Defect or Noncompliance and Report of Campaign Update; (3) Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters; (4) (a) Reports of MARPOL 73/78 Oil, Noxious Liquid Substances (NLSs) and Garbage Discharge, (b) Application for Equivalents, Exemptions, and Alternatives, and (c) Voluntary Reports of Pollution Sightings; and (5) Course Approvals for Merchant Marine Training Schools. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before September 30, 2002.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–12690] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on these documents; or Dorothy Beard, Chief, Documentary Services Division, U.S. DOT, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document by docket number [USCG 2002–12670], and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.

OMB Control Number: 2115–0139.

Summary: The information is needed to ensure that personnel aboard ships become aware of the proper usage and stowage for certain hazardous materials. The form provides for waivers of products in special classes of DOT hazards.

Need: 46 U.S.C. 3306 authorizes the Coast Guard to prescribe regulations for the transportation, stowage, and use of ships' stores and supplies of a dangerous nature. 46 CFR part 147 prescribes the regulations for hazardous ships' stores.

Respondents: Suppliers and manufacturers of hazardous products used on ships.

Frequency: On occasion.

Burden Estimate: The estimated burden is 6 hours a year.

2. *Title:* Report of Defect or Noncompliance and Report of Campaign Update.

OMB Control Number: 2115–0035.

Summary: The information in this report is needed to ensure manufacturers' compliance with requirements for notifying consumers of defects in recreational boats, inboard engines, outboard motors, and sterndrive units.

Need: 46 U.S.C. 4310 requires manufacturers of boats and engines to notify consumers, both of failures to comply with applicable standards of the Coast Guard for safety and of defects that create a substantial risk of personal injury to the public. 46 U.S.C. 4310 and 33 CFR part 179 prescribe requirements for certain reports to the Coast Guard concerning potential impacts on recreational boating safety, how problems will be corrected, and progress in notifying owners and repairing affected units.

Respondents: Manufacturers of recreational boats, inboard engines, outboard motors, and sterndrive units.

Frequency: Quarterly.

Burden Estimate: The estimated burden is 328 hours a year.

3. *Title:* Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 2115–0598.

Summary: The information is needed to carry out the reporting requirements of 16 U.S.C. 4711 regarding the management of ballast water, to prevent the introduction and spread of aquatic-nuisance species into U.S. waters.

Need: The information is needed to ensure compliance with the requirements in 33 CFR Part 151, subparts C and D. It is also needed for research and periodic reporting to Congress.

Respondents: Owners and operators of certain vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden is 33,500 hours a year.

4. *Title:* (a) Reports of MARPOL 73/78 Oil, Noxious Liquid Substances (NLS) and Garbage Discharge; (b) Application for Equivalents, Exemptions, and Alternatives; and (c) Voluntary Reports of Pollution Sightings.

OMB Control Number: 2115–0556.

Summary: The information is needed by the Coast Guard to ensure compliance with pollution-prevention standards and to respond to and investigate pollution incidents.

Need: 33 U.S.C. 1321 and 1903 authorize the Coast Guard to establish regulations to promote the protection of the environment. 33 CFR subchapter O (parts 151 to 159) sets forth these regulations.

Respondents: Owners and operators of vessels for (a) and (b), and the public for (c).

Frequency: On occasion.

Burden Estimate: The estimated burden is 10 hours a year.

5. *Title:* Course Approvals for Merchant Marine Training Schools.

OMB Control Number: 2115–0111.

Summary: The information is needed to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curricula, facilities, and faculties for these schools.

Need: 46 U.S.C. 7315 authorizes an applicant for a license or document applicant to substitute the completion of an approved course for a portion of the required sea service. 46 CFR 10.302 prescribes the Coast Guard regulations for course approval.

Respondents: Merchant marine training schools.

Frequency: Five years for reporting; one year for recordkeeping.

Burden Estimate: The estimated burden is 16,988 hours a year.

Dated: July 5, 2002.

N.S. Heiner,

Acting, Director of Information and Technology.

[FR Doc. 02–19361 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Updated Noise Exposure Maps for San Francisco international Airport, San Francisco, CA

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Updated Noise Exposure Maps submitted by the city and county of San Francisco for the San Francisco International Airport, San Francisco, California under the provisions of Title 1 of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and Title 14, Code of Federal Regulations (CFR), Part 150, are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's acceptance of the Updated Noise Exposure Maps for the San Francisco International Airport, San Francisco, California is July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, Supervisory, Planning and Programming Section, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Brulingame, California 94010. Telephone: (415) 876–2805. Documents reflecting this FAA action may be review at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Updated Noise Exposure Maps submitted for the San Francisco International Airport, San Francisco, California are in compliance with applicable requirements of Federal Aviation Regulation (FAR) part 150, effective July 17, 2002.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act'', an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title 1 of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes of the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Updated Noise Exposure Maps and supporting documentation submitted by the city and county of San Francisco. The specific maps under consideration are Figure 5 ''2001 Noise Exposure Map'' and Exhibit 2, ''2006 Noise Exposure Map'' in the submission. The FAA has determined that these maps for the San Francisco International Airport are in compliance with applicable requirements. This determination is effective on July 17, 2002. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix (A) of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not involved in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR Part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying on the surface requests exclusively with the airport operator, which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the updated Noise Exposure Maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.
Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, Hawthorne, CA 90261.
Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010.
City and County of San Francisco, San Francisco International Airport, San Francisco, California 94128.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on July 17, 2002.

Ellsworth Chan,

Manager, Safety and Standards Branch, AWP–620, Western-Pacific Region.

[FR Doc. 02–19364 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices PRB. The purposes of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of PRB members are as follows:

Tony Brown, Director, Community Development & Financial Institutions
Art Cameron, Deputy Assistant Secretary, Appropriations Management, Legislative Affairs
Marie E. Canales, Acting Deputy Assistant Secretary, Information Systems & CIO
J. Patrick Cave, Deputy Assistant Secretary, Financial Institutions & GSE Policy
Mary Chaves, Director, Office of International Trade
Richard Clarida, Assistant Secretary, Economic Policy
Marcia H. Coates, Director, Office of Equal Opportunity Program
Edward J. DeMarco, Director, Office of Government Sponsored Enterprises Policy
Kay Frances Dolan, Deputy Assistant Secretary (Human Resources)
John Duncan, Assistant Secretary, Legislative Affairs
Joseph Englehard, Deputy Assistant Secretary (Trade & Investment Policy)
James Fall, III, Deputy Assistant Secretary (Technical Assistance Policy)
Ronald A. Glaser, Director, Office of Personnel Policy
Donald Hammond, Fiscal Assistant Secretary
Barry K. Hudson, Director, Office of Financial Management
Roger E. Kodat, Deputy Assistant Secretary, Government Financial Policy
Donald W. Kiefer, Director, Office of Tax Analysis
Jeffrey Kupfer, Executive Secretary
Kenneth Lawson, Assistant Secretary, Enforcement
David Lebryk, Deputy Assistant Secretary (Fiscal Operations and Policy)
April Lehman, White House Liaison
Randal Quarles, Assistant Secretary, International Affairs

James R. Lingebach, Director, Office of Accounting and Internal Control
David Loevinger, Director, East Asian Nations
William C. Murden, Director, Office of International Banking and Securities Markets
Julie Myers, Deputy Assistant Secretary, Financial Crimes
Pamela Olson, Deputy Assistant Secretary, Tax Policy
Joel D. Platt, Director, Revenue Estimating
Steven C. Radelet, Deputy Assistant Secretary (Asia, the America and Africa)
Teresa Mullett Ressel, Deputy Assistant Secretary, Management & Budget
Corey Rindner, Director, Office of Procurement
Brian Roseboro, Assistant Secretary, Financial Markets
Gay H. Sills, Director, Office of International Investment
Kent Smetters, Deputy Assistant Secretary (Policy Coordination)
Mark D. Sobel, Deputy Assistant Secretary (International Money & Financial Policy)
Erin Solomon, Deputy Assistant Secretary (Regulatory Affairs)
Mark Warshawsky, Deputy Assistant Secretary (Microeconomic Analysis)
Willie E. Wright, Jr., Chief, Management & Administrative Programs
Juan Zarate, Deputy Assistant Secretary, Terrorism & Violent Crimes

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Barbara Borg, Department of the Treasury, Director, Office of Personnel Resources, Metropolitan Square Building, Room 6109, 15th and Pennsylvania Ave., NW., Washington, DC 20220, Telephone: (202) 622–2209.

This notice does not meet the Department's criteria for significant regulations.

Barbara Borg,

Director, Office of Personnel Resources.

[FR Doc. 02–19332 Filed 7–30–02; 8:45 am]

BILLING CODE 4811–20–M

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(C)(4), this notice announces the appointment of members of the Department PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Edward R. KIngman, Assistant Secretary for Management and CFO—Chairperson
Kay Frances Dolan, DAS for Human Resources
David A. Lebryk, Deputy Assistant Secretary for Fiscal Operations and Policy
Donald V. Hammond, Fiscal Assistant Secretary
Timothy D. Adams, Chief of Staff
Jeffrey F. Kupfer, Executive Secretary
Michelle A. Davis, Assistant Secretary (Public Affairs)
Kenneth E. Lawson, Assistant Secretary (Enforcement)
Brian C. Roseboro, Assistant Secretary (Financial Markets)
Juan C. Zarate, Deputy Assistant Secretary (Terrorism and Violent Crimes)
Teresa Mullet Ressel, Deputy Assistant Secretary (Management and Budget)
Willie E. Wright, Jr., Chief, Management and Administrative Programs
Bradley A. Buckles, Director, Bureau of Alcohol, Tobacco and Firearms
Mark Logan, Assistant Director (Liaison and Public Information), Bureau of Alcohol, Tobacco and Firearms
Candace E. Moberly, Deputy Assistant Director (Management), Bureau of Alcohol, Tobacco and Firearms
Robert C. Bonner, Commissioner, U.S. Customs Service
Douglas M. Browning, Deputy Commissioner, U.S. Customs Service
Marjorie L. Budd, Assistant Commissioner (Training and Development), U.S. Customs Service
Brian L. Stafford, Director, U.S. Secret Service
Carlton D. Spriggs, Deputy Director, U.S. Secret Service
Henrietta H. Fore, Director U.S. Mint
Jay M. Weinstein, Associate Director (Policy & Management)/CFO, U.S. Mint
Richard L. Gregg, Commissioner, Financial Management Service
Kenneth R. Papaj, Deputy Commissioner, Financial Management Service
Thomas A. Ferguson, Director, Bureau of Engraving and Printing
Carla F. Kidwell, Associate Director (Technology), Bureau of Engraving and Printing
John M. Dalrymple, Commissioner, Wage and Investment Division, Internal Revenue Service
David A. Mader, Assistant Deputy Commissioner Operations, Internal Revenue Service
Deborah M. Nolan, Deputy Commissioner, Large and Mid-Sized Business Division, Internal Revenue Service
Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities Division, Internal Revenue Service
Toni L. Zimmerman, Deputy CIO (Operations), Internal Revenue Service
Henry O. Lamar, Deputy National Taxpayer Advocate, Internal Revenue Service
Helen Bolton, Director, HR Policy and Programs, Information Systems, Internal Revenue Service
Frederick Van Zeck, Commissioner, Bureau of the Public Debt
Anne M. Meister, Deputy Commissioner, Bureau of the Public Debt
George B. Wolfe, Deputy General Counsel
Roberta K. McInerney, Assistant General Counsel (Banking & Finance)
Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics)
John C. Dooher, Senior Associate Director (Washington Office), Federal Law Enforcement Training Center

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Ronald A. Glaser, Department of the Treasury, Director, Office of Personnel Policy, Metropolitan Square Building, Room 6075, 15th and Pennsylvania Ave., NW., Washington, DC 20220, Telephone: (202) 622–1890.

This notice does not meet the Department's criteria for significant regulations.

Ronald A. Glaser,

Director Office of Personnel Policy.

[FR Doc. 02–19333 Filed 7–30–02; 8:45 am]

BILLING CODE 4811–20–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 950]

The Gang Resistance Education And Training Program: Availability of Financial Assistance, Criteria and Application Procedures

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of availability of funds for the Gang Resistance Education and Training Program.

SUMMARY: Subject to the availability of appropriations, the Bureau of Alcohol, Tobacco And Firearms (ATF) intends to enter into cooperative agreements with State and local law enforcement agencies to assist them in providing the Gang Resistance Education And Training (G.R.E.A.T.) Program to school students. This notice also sets forth the intended funding priorities and criteria, as well as the application procedures that ATF will use to select, and award Federal funds to, State and local law enforcement agencies to deliver the G.R.E.A.T. Program.

DATES: Applications must be received on or before September 30, 2002.

ADDRESSES: Send applications to Nicole Long, G.R.E.A.T. Branch; Bureau of Alcohol, Tobacco and Firearms; Cooperative Agreement Section; 800 K Street, NW., Suite 735; Washington, DC 20001; *Attn: Notice No. 950.*

FOR FURTHER INFORMATION CONTACT: Nicole Long, The G.R.E.A.T. Branch; Bureau of Alcohol, Tobacco and Firearms; 800 K Street, NW., Suite 735; Washington, DC 20001; telephone toll-free 1–800–726–7070, extension 7–3120. Or, send electronic mail (e-mail) to: *NMLong@atfhq.atf.treas.gov,* or visit the G.R.E.A.T. Web site at *www.atf.treas.gov/great/index.htm.*

SUPPLEMENTARY INFORMATION:

Background

G.R.E.A.T. is a life-skills competency program designed to provide students with the skills they need to avoid gang pressure and youth violence. G.R.E.A.T.'s violence prevention curriculum helps students develop values and practice behaviors that will help them avoid destructive activities. G.R.E.A.T. functions as a cooperative program utilizing the skills of ATF, Federal, State, and local law enforcement personnel, as well as individuals from community and civic groups.

The G.R.E.A.T. Program trains law enforcement officers in a school-based curriculum in which the officers provide instruction to school-aged children in life skill competencies, gang awareness, and anti-violence techniques. Training will be provided to any State or local law enforcement agency to the extent allocated funds allow. G.R.E.A.T. consists of three major phases:

- Phase I—School-Based Education,
- Phase II—After School/Summer Education/Booster Classes, and
- Phase III—Family Component.

Other Pertinent Information

All funded agencies shall be subject to an audit of program expenditures and curriculum adherence. ATF will use the audit findings to alter funding levels if deemed necessary by ATF.

Applicants who receive over $100,000, and have been teaching the G.R.E.A.T. Program for over a year, will be required to develop programs tailored to their respective communities for phases II and III. Failure to develop and provide phases II and III by July 1st will result in a reduction in funding of up to 25% for the remainder of the year. Mid-year funded agencies will be reviewed to ensure that funding requirements are being met. Agencies not meeting their funding obligations will have their monies reduced.

Agencies awarded $50,000 or more will be required to provide an officer (or officers) on a part-time basis to assist the G.R.E.A.T. Program as a National Training Team (NTT) member. NTT members serve as instructors for G.R.E.A.T. officer training sessions during the award period at the rate of two weeks per $50,000 dollars of the award amount. Agencies in their first year of Federal funding are exempt from this requirement. However, the funded agency will be required to designate an officer to complete the NTT G.R.E.A.T. Management Training course.

Application Procedures

Application for financial assistance must be made on ATF Form 6410.1 (Gang Resistance Education And Training Funding Application). Application forms may be obtained by contacting Nicole Long or the Cooperative Agreement Section, G.R.E.A.T. Branch; Bureau of Alcohol, Tobacco and Firearms; 800 K Street, NW., Suite 735; Washington, DC 20001; telephone toll-free 1–800–726–7070, extension 7–3120. E-mail address: *NMLong@atfhq.atf.treas.gov* or visit the G.R.E.A.T. Web site at *www.atf.treas.gov/great/index.htm.*

If your agency was funded during the last award period (1/15/2002 to 1/14/2003), you can have application forms sent or questions answered by your current G.R.E.A.T. Program Branch cooperative agreement point of contact.

Funding Categories and Funding Distributions

In order to provide funding to a range of community sizes and locations, applicants will be divided into five categories based on population. The population categories are: (a) 1,000,000 and over; (b) 999,999–500,000; (c) 499,999–100,000; (d) 99,999–25,000; and (e) 24,999 or less. Each applicant is required to report its population figures using the Bureau of Census 2000 Population Report for its entire service area. Population figures may be obtained from the Bureau's Web site at: *www.census.gov/population/www/estimates,* or by contacting the Census Bureau at 301–457–4608.

Criteria and Points

Each application will be evaluated and scored on the basis of the following criteria:

(1) Juvenile crime statistics (25%);

(2) Percentage of eligible 6th, 7th, and 8th grade students the applicant proposes to teach, and the percentage of eligible students previously taught the G.R.E.A.T. core curriculum (35%);

(3) Presence of curriculum reinforcement programs (25%) (Such as Elementary, After School/Summer Education/Booster Classes, and Family Component/Parent Involvement programs); and

(4) Support of National G.R.E.A.T. Program Training (15%).

Criterion 1. This criterion measures the magnitude of an applicant's youth crime problem using the number of Part I and II offenses reported in the Uniform Crime Reports (UCR) published annually by the Federal Bureau of Investigation (FBI). Part I and II offenses are defined and listed in Appendix II of the UCR. Please note that the most current UCR is usually two years in arrears. ATF will obtain the required juvenile crime figures directly from the FBI. Applicants must indicate which service area (i.e. city, county, etc.) that ATF should use to obtain their most recent UCR juvenile crime figures.

In the event that an applicant does not provide annual data to the FBI for the UCR, the applicant should contact the G.R.E.A.T. Branch to determine how it can best submit information to measure its youth crime statistics.

Criterion 2. This criterion will measure middle school participation and consists of two sections:

- *Section A.* An applicant will receive points based on the percentage of middle school students proposed to be taught G.R.E.A.T. compared to the total population of middle school students in the jurisdiction.

• *Section B.* An applicant will receive points based on the percentage of middle school students who were taught G.R.E.A.T. during the last school year compared to last year's total population of eligible middle school students that could have been taught.

Criterion 3. This criterion is used to identify applicants who currently have life skills programs in place that reinforce the effectiveness of the G.R.E.A.T. middle school core curriculum. Life skill programs are those programs that instruct students in skills such as communication, active listening, empathy, avoiding peer pressure, conflict resolution, decision making, responsibility, citizenship, goal setting, cultural sensitivity, and behavior/anger management. Applicants will be asked to identify elementary, middle, and high school programs, as well as other summer, parent/family, and after school programs, in their service area. Applicants must include a narrative statement describing each such program and identify which G.R.E.A.T. life skills, or any of the skills listed above, the program reinforces.

Criterion 4. The G.R.E.A.T. Program depends on G.R.E.A.T. Officers to act as National Training Team (NTT) instructors at our G.R.E.A.T. Officer Trainings sessions. Without this support, the program could not function. This criterion will recognize and reward applicants who provide NTT members for G.R.E.A.T. Officer training as delineated in the cooperative agreement.

Other Considerations

ATF will consider past year awardees previous spending of G.R.E.A.T. funds when determining their future funding levels. Unless sufficient documentation and support is supplied, applicants will not be funded at higher levels if past year spending indicates funds were underutilized. In order to assure that G.R.E.A.T. funds are spent in a fiscally responsible manner, ATF will also consider the cost per child for an applicant to conduct the program when awarding funds. ATF defines an agency's cost-per-child as the number of children to be taught divided by the eligible awarded funds.

Catalog of Federal Domestic Assistance (CFDA)

For the purpose of tracking Federal funds used in grants and cooperative agreements, the G.R.E.A.T. Program has been assigned CFDA number 21.053.

Paperwork Reduction Act

The collection of information contained in this notice has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)) under control number 1512–0548. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Authority and Issuance

This notice is issued pursuant to Office of Management and Budget Circular No. A–102 (Grants and Cooperative Agreements with State and Local Governments).

Approved: July 23, 2002.

Bradley A. Buckles,

Director.

[FR Doc. 02–19239 Filed 7–30–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–5; OTS Nos. H–3858 and 02859]

Monarch Community Bancorp, Inc., Clodwater, Michigan; Approval of Conversion Application

Notice is hereby given that on July 17, 2002, the Director, Examination Policy, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Branch County Savings & Loan Association of Coldwater, Coldwater, Michigan, to convert to the stock form or organization and to change its name to Monarch Community Bank. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW, Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

By the Office of Thrift Supervisions.

Dated: July 25, 2002.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 02–19242 Filed 7–30–02; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Wednesday,
July 31, 2002

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, et al.

Commercial Driver's License Standards, Requirements and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 383, 384 and 390

[Docket Nos. FMCSA–2001–9709 and FMCSA–00–7382]

RIN 2126–AA60 and RIN 2126–AA55

Commercial Driver's License Standards, Requirements and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA revises its Commercial Driver's License (CDL) Program. The Motor Carrier Safety Improvement Act of 1999 (MCSIA) mandates these revisions. They are designed to enhance the safety of commercial motor vehicle (CMV) operations on our nation's highways by ensuring that only safe drivers operate CMVs.

EFFECTIVE DATE: September 30, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–5014, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION

Regulatory Information

The FMCSA published two Notices of Proposed Rulemaking (NPRMs) [66 FR 22499 on May 4, 2001 and 66 FR 39248 on July 27, 2001] to amend various provisions of parts 350, 383, 384 and 390 of Title 49 Code of Federal Regulations (CFR) to implement congressionally mandated changes. Nearly 200 comments were received in response to these two NPRMs. Both NPRMs are being finalized in this action.

This rule uses plain language so that individuals unfamiliar with FMCSA regulations will find it easier to follow. We are making the text clearer, standardizing terms, changing to the active voice, reorganizing material for added clarity, inserting or revising headings to reflect content accurately, and correcting typographical, punctuation, and grammatical errors. The FMCSA is also revising the disqualification sanctions found in§ 383.51 by organizing them into an if-then table format that we believe is easier to understand than the current regulatory text.

Background

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [Public Law 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313] established the Commercial Driver's License (CDL) Program and the Commercial Driver's License Information System (CDLIS) to serve as a clearinghouse and repository of commercial driver licensing and conviction data. The CMVSA also requires States to ensure that drivers convicted of certain serious traffic violations be prohibited from operating a CMV. The Secretary of Transportation was directed to monitor the States' compliance with the standards established under the CMVSA. The goal of the CMVSA is to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways.

In 1994, the agency initiated a study to evaluate the effectiveness of the CDL program. The final report, submitted to Congress in 1999, documented vulnerabilities within the CDL program and provided recommendations to correct them.

Responding in part to the findings of this report, Congress passed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Public Law 106–159,113 Stat. 1748]. The MCSIA amended numerous provisions of title 49 of the United States Code relating to the licensing and sanctioning of CMV drivers required to hold a CDL, and directed the Department of Transportation (DOT) to amend its regulations to correct specific weaknesses in the CDL program.

This rule also clarifies the FMCSA relationship to the Commercial Driver's License Information System (CDLIS). Section 12007 of the CMVSA, codified as 49 U.S.C. 31309, requires the Secretary of Transportation to establish or designate an information system to serve as the clearinghouse and depository of information about any person who operates CMVs, including his/her identification, licensing history, and disqualification history. This system, known as CDLIS, also includes information about a person required to have a CDL who has been convicted of any of the disqualifying offenses listed in 49 CFR 383.51.

In 1988, the Federal Highway Administration (FHWA) entered into an agreement pursuant to 49 U.S.C. 31309 with the American Association of Motor Vehicle Administrators and its former affiliate AAMVAnet, Inc.[1] (AAMVAnet), to establish a communications network to implement the CDLIS. The agreement designated AAMVAnet the CDLIS operator. Section 106(b) of MCSIA, transferred the agreement from the FHWA to the FMCSA where it remains in effect until the FMCSA modifies or terminates it. A copy of the 1988 agreement is in the public docket.

Because States regularly utilize AAMVAnet to access the CDLIS to obtain and transmit information on CDL drivers, the AAMVAnet agreement and CDLIS operational procedures are being incorporated by reference into this rulemaking.

The following commentary will analyze the content of the regulations and address significant issues raised in comments received in response to the NPRMs.

Section-by-Section Discussion of Comments with FMCSA Response

Section 350.217—What Are the Consequences for a State With a CDL Program Not in Substantial Compliance With 49 CFR Part 384, Subpart B?

Section 103(e) of the MCSIA requires the FMCSA to withhold all Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under Section 103(b)(1) of MCSIA from States not in substantial compliance with 49 CFR part 384, subpart B. This new sanction is added to the one currently contained in 49 CFR part 384, subpart D requiring the agency to withhold five percent of some of a State's Federal-aid highway funds following the first year of noncompliance and 10 percent of such funds following the second and subsequent years of noncompliance.

Fifteen States and State affiliated associations commenting on this provision oppose the withholding of MCSAP funds from States not in substantial compliance with the Federal Motor Carrier Safety Regulations (FMCSRs). Of particular concern was the fact that the agencies facing the potential loss of MCSAP funds, primarily law enforcement agencies, have no direct control over compliance by other State agencies, particularly the courts. Compliance with the proposed 10-day conviction reporting requirement of 49 CFR 384.209 is the issue which raises the greatest concerns. One agency also proposes that the withholding of MCSAP funding requirement be

[1] On May 31, 2002, AAMVAnet, Inc. was merged into AAMVA. AAMVAnet, Inc. no longer exists as a separate corporation.

amended to adopt the same formula used to withhold highway funding from States in substantial noncompliance.

The FMCSA understands these concerns, but is bound by statutory language of the MCSIA requiring the withholding of MCSAP funds from those States found to be in substantial noncompliance with 49 CFR part 384, subpart B. The FMCSA urges each State's chief executive to coordinate the efforts of all State agencies—including the judiciary—to ensure their compliance with these requirements.

Section 383.5—Definitions.

Section 383.5 will add four new definitions and change four existing definitions of terms used in 49 CFR parts 383 and 384 to implement provisions of the MCSIA. The new definitions include ''fatality,'' ''imminent hazard,'' ''non-CMV,'' and ''school bus.'' The revised definitions include ''disqualification,'' ''driving a commercial motor vehicle while under the influence of alcohol,'' ''nonresident CDL,'' and ''serious traffic violation.'' The term ''serious traffic violation'' is being amended to add three new offenses to the existing list of offenses warranting disqualification of a CDL holder.

The FMCSA has added a new definition for the term ''non-CMV'' to identify the vehicles types in which—if a driver is convicted of committing a serious traffic offense other than those specifically limited to commercial vehicles—he/she is subject to disqualification.

One commenter suggested that the definition of ''fatality'' be revised to be consistent with current Federal definitions, without providing an example of the preferred definition(s). FMCSA notes that the 49 CFR 390.5 fatality definition— '' * * * any injury which results in the death of a person at the time of the motor vehicle accident *or within 30 days of the accident*'' (emphasis added)—is primarily used within the context of fatality reporting. Because the new 49 CFR part 383 definition is to be used within the context of driver sanctions, FMCSA has deleted the reference to a 30-day time period. Otherwise a driver involved in an accident which results in a death more than 30 days after the accident could possibly avoid sanctions. Such an effect is both inconsistent with the objective of CDL sanctioning requirements and contrary to general principles of common law under which any death occurring within one year of the event may be charged criminally. FMCSA recognizes, of course that a death which occurs long after an accident may have a proximate cause or causes other than the injuries sustained in the accident. Therefore, the deletion of the ''30-day'' reference is in no way intended to weaken the causal link necessary to qualify as a fatality.

Seven commenters proposed revisions to the definition of ''school bus.'' Three proposed that the FMCSA use the National Highway Traffic Safety Administration (NHTSA) definition or that the term only include vehicles that transport 16 or more passengers including the driver; while two proposed that the passenger capacity be lowered to 10 or more passengers. Two other commenters objected to the proposed definition, but offered less specific comments. The FMCSA has reviewed the NHTSA definition and believes that the proposed definition is consistent with it, except for using the term CMV. The term CMV was included in the ''school bus'' definition because only vehicles meeting the CMV definition are subject to the CDL licensing requirements of 49 CFR part 383, including the new school bus endorsement. As with other CDL requirements in 49 CFR part 383, the school bus definition is intended to establish a minimum standard. A State is free to establish more stringent standards for CDL drivers. Allowable variations to the school bus definition include lowering the vehicle passenger capacity threshold for which a school bus endorsement is required. For these reasons, the FMCSA has included the ''school bus'' definition proposed in the NPRM to this final rule.

The commentary to § 383.23 discusses comments concerning the definition of ''nonresident CDL.''

One commenter questioned the different terminology proposed in the NPRM for one of the serious traffic violations described in Sec. 201(c) of MCSIA. New 49 U.S.C. 31301(12)(F) reads:

''(F) Driving a commercial motor vehicle when the individual has not met the minimum testing standards—

(i) Under section 31305(a)(3) for the specific class of vehicle the individual is operating; or

(ii) Under section 31305(a)(5) for the type of cargo the vehicle is carrying; and.''

Paragraph (h) under the § 383.5 definition for ''serious traffic violation'' reads ''Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.'' The FMCSA believes that the revised language more clearly conveys congressional intent that only those drivers who are fully qualified to operate a specific vehicle be allowed to operate it. The evidence that a driver has met the minimum CDL testing standards is that he/she has been issued a CDL and all required endorsements for the class and specific type of CMV he/she intends to operate.

Section 383.7—Validity of CDL Issued by Decertified State.

Sec. 383.7 is a new provision to clarify that a CDL issued by a State subsequently prohibited from issuing CDLs under 49 CFR 384.405 remains valid until expiration. Based upon the fact that FMCSA received no opposing comments and a single supporting comment on this provision, it is included in the final rule as proposed.

Section 383.23—Commercial Driver's License.

Section 383.23 has been amended to allow a driver who is domiciled in a State that has been prohibited (under the decertification provisions found in § 384.405) from issuing CDLs, to apply for a nonresident CDL from any other State that is both in compliance with such decertification provisions and elects to issue nonresident CDLs. References to the date ''April 1, 1992'' have also been deleted from this section because the date referred to a compliance deadline which is no longer relevant.

Six States expressed concern that the proposed new language in this section would require them to issue nonresident CDLs to drivers living in States that had been decertified. The intent of this new language *was to authorize, but not require* States to issue nonresident CDLs to such drivers. The FMCSA has added language to the final rule to clarify this issue.

A State objected that allowing States to issue nonresident CDLs to drivers domiciled in other States would result in confusion over State-specific endorsements. Because the agency anticipates that the sanction under § 384.405 will rarely be invoked, the FMCSA believes that State-specific endorsements will not pose a significant problem to States issuing nonresident CDLs or States taking enforcement action against drivers possessing nonresident CDLs.

Section 383.51—Disqualification of Drivers.

Section 383.51 has been revised to incorporate requirements of Section 201 of the MCSIA. These revisions include: imposing a disqualification on CDL drivers who have been convicted of traffic offenses while operating a non-CMV which result in their license being canceled, revoked or suspended; or of committing drug or alcohol related offenses while driving a non-CMV; and adding two new disqualifying offenses: driving a CMV after the driver's CDL was revoked, suspended or canceled for violations while operating a CMV and causing a fatality through the negligent or criminal operation of a CMV. As discussed in the commentary to § 383.5, three new offenses are being added to the serious traffic violations for which a driver can be disqualified if convicted two or more times within a three-year period. These three new offenses are: (1) Driving a CMV when the driver has not obtained a CDL, (2) driving a CMV without a CDL in the driver's possession, and (3) driving a CMV without having met the minimum testing standards for the specific class of CMV being operated or for the type of cargo being transported on the vehicle. This section is also being amended to specify the disqualification period for first-time and subsequent offenders.

The CMVSA originally required the disqualification of drivers only for offenses committed while operating a CMV (49 U.S.C. 31310). The MCSIA made additional offenses disqualifying, even if they were committed while operating a non-CMV. For these offenses, the Secretary of Transportation is required to specify the disqualification periods to be imposed by the States.

In addition, the FMCSA is clarifying that any person who operates a CMV must first obtain a CDL and that these drivers are subject to the same disqualification period as a CDL holder. While the MCSIA addresses the type of offenses that must result in a disqualification if committed in a non-CMV, it is silent regarding the length of the CMV disqualification, requiring only that the disqualification period be no longer than the disqualification period for the same or similar offenses committed while operating a CMV. Based on this language, the FMCSA has added language to this section clarifying that CDL holders convicted of serious traffic violations and other offenses in either a non-CMV or a CMV serve the same period of disqualification.

The revised § 383.51 lists both the CMV convictions of CDL holders for the original offenses under the CMVSA and the non-CMV convictions for other offenses added in subsequent statutory amendments. A clarification is also provided in § 383.51(a)(4) that both CMV and non'CMV convictions for disqualifying offenses will be used in determining first and subsequent violations. The entire section is being revised to incorporate an easy to understand ''if-then'' table format.

Five commenters expressed their view that the if-then table format was confusing or did not clearly indicate the circumstances that triggered the stated disqualification period for offenses listed in the various headings and columns. Based on these comments, the FMCSA has reviewed the tables and has made a few minor changes to clarify their intended meaning. The agency believes that after users become familiar with the new format, they will find it easier to locate the appropriate disqualification period for all of the disqualifying offenses.

The FMCSA received a total of 96 comments on the May 4, 2001 NPRM concerning ''Noncommercial Motor Vehicle Violations.'' While most comments expressed general support for the concept of CDL holders being held accountable for offenses committed in both CMVs and non-CMVs, many comments offered suggestions for revisions to the final rule. Some comments specifically mentioned that the tables listing the offenses and the period for which a driver is disqualified were a great improvement over narrative explanations of these disqualifying offenses. Other comments suggested that changes to other areas of the rule may need to be made. The following discussion addresses these comments.

Ten comments indicated that no other profession prevents a person from making a living based on driving convictions that occurred while operating a private automobile or other noncommercial vehicle. CDL holders are, unlike most licensed passenger car drivers, professional drivers. They earn their living by operating large, heavy vehicles and/or transporting passengers. Given their status as professionals, CDL holders are held to a higher standard. CDL holders should not engage in risky, unsafe behavior while pursuing their profession—driving. The Congress has chosen, in the interest of safety, not to distinguish between risk-taking behavior in a passenger car or a CMV. Section 201(b) of the MCSIA specifically directed the Secretary of Transportation to issue regulations requiring the disqualification of CDL holders convicted of serious offense while operating a non-CMV.

Twenty commenters fully support the concept of CDL drivers being held to a higher standard by being accountable for both CMV and non-CMV convictions, while seven other commenters supported this concept in regard to alcohol and drug related offenses, but do not believe that convictions for serious traffic violations in a non-CMV for excessive speed and following too closely should be included. Seven comments oppose holding CDL drivers accountable for non-CMV convictions and describe it as an unnecessary burden and a double standard. The FMCSA believes that all serious traffic violations by a CDL holder should be counted when operating a non-CMV because these types of violations have consistently contributed to crashes and fatalities.

Ten comments suggest that if CDL holders are going to be held to higher standards and penalties when operating a non-CMV than drivers with an automobile license, then everyone who drives a vehicle should be liable for these higher penalties when operating their private automobiles. This suggestion falls outside the scope of this rulemaking and the authority of the agency. The FMCSA does not have authority to set standards and penalties for drivers licensed to operate only non-CMVs.

Fourteen comments recommended that penalties for a conviction in a non-CMV should be less than in a CMV, at a higher threshold as far as the number of convictions that would cause the driver to be disqualified or that the FMCSA should let each State decide the length of the penalties. These comments argue that if Congress wanted the same penalties for both types of offenses, it would have been specifically addressed in Federal law. The FMCSA has the authority to set the same penalties for both types of offenses; Congress simply said that penalties in a non-CMV may not be greater than the penalties for the same offense in a CMV. The FMCSA believes that by setting the minimum penalties for all offenses rather than leaving non-CMV penalties to the States, there will be greater national uniformity and consistency in the administration of the CDL program.

Ten comments object to railroad-highway grade crossing offenses being included in non-CMV offenses, either as currently worded because these types of offenses do not apply to non-CMVs, or because the inclusion of these offenses goes beyond the intent of Congress. The FMCSA agrees that the wording of these types of offenses specifically addresses actions that only apply to CDL holders while operating a CMV. Therefore the non-CMV railroad-highway grade crossing offenses have been eliminated from the final rule.

Five comments request a clarification of the relationship between alcohol related ''convictions,'' ''administrative per se suspensions'' and ''refusal to be tested'' in Table 1 to § 383.51. They express confusion over what action is to be taken against a driver's CDL under these three actions, particularly for non-CMV offenses. The FMCSA has modified Table 1 to § 383.51 to clarify what actions must be taken for alcohol related ''convictions'' and ''refusal to be tested.'' The relationship between ''convictions'' and ''administrative per se suspensions'' is discussed in current regulatory text under § 383.51(f) and is being moved to § 384.203 to make it more visible.

Concerning the relationship between ''convictions'' and ''administrative per se suspensions,'' the FMCSA offers the following background information. The CMVSA required that CDL drivers convicted of operating a CMV with an alcohol concentration of 0.04 or greater be subject to being disqualified from operating a CMV for a period of one to three years for a first conviction, depending on the cargo being transported. This sanction does not apply to CDL drivers operating a non-CMV at this alcohol concentration. Table 1 to § 383.51 has been revised to clarify this fact. The § 383.5 definition of ''conviction'' includes guilty findings by ''an authorized administrative tribunal.'' This definition was intended to encompass any type of administrative determination of guilt including State administrative per se DWI laws. Accordingly, a CDL driver found guilty of operating a CMV with an alcohol concentration of 0.04 or greater or of violating a State's DWI laws as a result of an administrative hearing, while operating a CMV or non-CMV, would be subject to being disqualified under the requirements of § 383.51.

One comment asks whether the definition of ''non-CMV'' includes recreational vehicles used in an off road environment (e.g. snowmobiles, watercraft, all terrain vehicles, etc.). The regulations define the term ''motor vehicle'' in § 383.5 as a vehicle '' * * * used on highway * * *'' It does not include recreational vehicles designed for off road use.

Four comments ask whether conviction in a non-CMV prior to applying for a CDL will prevent the issuance of the CDL. The Act clearly states that penalties for offenses committed by a CDL holder in a non-CMV shall be counted. Therefore, only non-CMV convictions for offenses committed after a person obtains a CDL can be counted against his or her driving record.

Seven comments ask if a State must include non-CMV convictions that occurred prior to enactment of MCSIA. The FMCSA can only take action on offenses that occur after the effective date of the final rule and a State only has to take action upon the effective date of its State law or regulation.

Three comments state that the new disqualification requirements are complex and difficult to understand in the tables. While the FMCSA developed these tables in keeping with guidelines for using plain language and if/then tables for Federal regulations, we have made some revisions to help clarify the intent of the new requirements. There were also several comments that indicate that the tables make it easier to understand the requirements.

Eight comments indicate that 49 U.S.C. 31310(g) refers to operators of CMVs who are convicted of drug or alcohol related offenses in a non-CMV, and that only convictions for serious offenses in a non-CMV which result in State revocation, suspension or cancellation of a driver's non-CMV privileges shall result in the disqualification from operating a CMV. The comments argue that by naming specific offenses and penalty periods the FMCSA has exceeded its authority. The language of Section 31310(g), enacted by Sec. 201 of MCSIA gives the FMCSA ample authority to specify what constitutes a ''serious offense,'' although the violation will not be disqualifying unless the State also finds that the circumstances of the offense warrant ''revocation, cancellation, or suspension of the individual's license.'' Section 31310(g)(2) specifically authorizes the FMCSA to ''establish the minimum periods for which the disqualification shall be in effect * * *'' That is exactly what the agency has done in § 383.51 in order to promote safety and uniformity among the States. The FMCSA further believes that Congress, in using the term ''serious offense'' in Section 31310(g)(1)(A), was referring to the ''serious traffic violations'' already specified in §§ 383.5 and 383.51(c). Violations are not listed as disqualifying in § 383.51 unless they are demonstrably significant, i.e., contribute to crashes and fatalities.

Three comments state that the FMCSA should not give the States the option of using .04-alcohol concentration as a disqualifying offense for a non-CMV conviction. The FMCSA only has the authority to establish a minimum alcohol concentration disqualification standard for CDL drivers. As with other minimum standards, however, individual States are free to impose more stringent standards, including establishing a lower alcohol concentration, for both CDL and non-CDL drivers licensed by their State.

One comment proposed revisions to permit a driver to operate while a CMV conviction is under judicial appeal. The FMCSA defers to State law and procedure to determine this issue. If, as is the case in many jurisdictions, a trial court judgment does not become a final conviction for a certain period of time to allow a defendant to appeal the verdict, the driver may continue to operate until that time or if an appeal is filed, until the appellate court renders judgment. However, if a conviction is entered as final, the penalty provisions of this regulation apply.

One comment recommends that the rule require States to record the number of miles per hour by which the driver of a non-CMV exceeds the posted speed limits. The only disqualifying offense for speeding in a CMV or non-CMV is excessive speeding, i.e., 15 miles per hour or more over the posted speed limit. A code already exists in the CDLIS for this offense when it is committed in a CMV. The code will be revised to include CMV and non-CMV.

Three comments suggest that both the May 4 and July 27 NPRMs be given the same effective date because many provisions are tied together. The FMCSA agrees. We decided to merge both MCSIA proposals into one final rule with a single effective date for all provisions.

Three comments ask if the State of licensure can disqualify CMV drivers for failure to pay child support. Each State has the authority to set additional disqualification requirements for drivers licensed in their State, including failure to pay child support. This rule only sets the minimum disqualification requirements for a State to remain in substantial compliance with the Federal requirements.

One comment questions whether the costs of the rule on non-CMV violations constitute an unfunded mandate under the Federal regulations when considered with other CDL-related MCSIA requirements. Based on the agency's economic analysis of this issue discussed in the Rulemaking Analyses and Notices section of this rulemaking, the FMCSA does not believe that this requirement imposes an unfunded mandate on the States.

One comment requested clarification of the use of a non-CMV in the commission of a felony involving a controlled substance. The FMCSA believes that this is self-explanatory. If the vehicle is used in the manufacturing, distributing, or dispensing of a ''controlled substance'' as defined in 49 CFR 383.5, it is a CDL felony offense.

One comment suggests that the FMCSA also provide a narrative text describing the offenses and disqualification penalty in Tables 1 through 4 to § 383.51. Such a narrative would defeat the purpose of the tables: to provide a more easily understandable description of the offenses and penalties. Each State is, however, free to use a narrative form of the tables in its own legislation or regulations. A narrative form can be easily developed from the tables.

One comment asks why hazardous materials drivers are being penalized differently from other CDL drivers for violations that occur in a non-CMV that is not carrying hazardous materials. The commenter appears to have misread the § 383.51 table, which only requires that enhanced penalties be imposed against drivers who are actually carrying hazardous materials in a CMV at the time of the offense.

One comment states that proposed §§ 383.51, 384.218 and 384.219 are drafted in a style completely different from § 384.224. The commenter suggests either that all sections cross-reference § 383.51 or that each section require disqualification for particular offenses. All the sections mentioned by the comment relate to compliance with § 383.51. The styles in which they are written are different because there are separate State substantial compliance requirements for second and third serious traffic violations while there is only one specific requirement for non-CMV violations.

Two comments request the FMCSA to develop a definition of the term ''authorized agents.'' The FMCSA believes that this term is sufficiently defined under individual State statute, regulation or case law, and need not be included in this rulemaking.

One comment asks why the NPRM does not address how the new regulations on non-CMV violations of a CDL holder will apply to Mexican, Canadian and other foreign drivers. Mexican and Canadian CDL drivers may operate in the U.S. on a license issued by their home jurisdiction in accordance with reciprocity agreements between the U. S. and Canada and Mexico as noted in the footnote to 49 CFR 383.23(b). These drivers are subject to all of the U.S. CDL requirements while operating in the U.S., including disqualification for convictions while operating a non-CMV in the U.S. The Department will initiate discussions with Mexico and Canada on the issue of non-CMV offenses by these drivers while operating in their home country. All other foreign CDL drivers must obtain a nonresident CDL to legally operate in the U.S. The issuance of the nonresident CDL subjects these drivers to the same requirements as other CDL holders while operating in the U.S.

Thirteen comments challenge the accuracy of our cost data analysis. This issue is being addressed in the economic analysis area of this rulemaking.

One commenter requests that the rule explicitly state that the disqualification action must be based on a conviction of the listed offenses. FMCSA has amended Table 1, 2, 3 and 4 to § 383.51 to clarify this issue.

One commenter asks if the two new disqualifying offenses being added to Table 1 to § 383.51 are subject to the 10-year reinstatement provision of § 383.51(a)(5). The answer is yes, and the text of this section has been amended to reflect this fact.

A few additional comments point out typographical errors in the Tables. These errors have been corrected in the final rule.

Four commenters noted that the FMCSA omitted certain qualifying language enacted by Sec. 201(a) of the MCSIA. Specifically, 49 U.S.C. 31310(b)(1)(D) and (c)(1)(D) require a 1-year disqualification the first time a driver is convicted of driving a CMV when his/her CDL is revoked, suspended, or canceled, or when he/she is disqualified from driving a CMV, *providing* the revocation, suspension, cancellation or disqualification was ''based on the individual's operation of a commercial motor vehicle''. In other words, the 1-year disqualification is not required if the driver's CDL was revoked, suspended, or canceled, or he/she was disqualified, for violations that occurred in a non-CMV. The commenters are correct. Also, in the situation where more than one conviction is required to be disqualified, all convictions must have occurred while operating a CMV. The FMCSA has added this qualifying language to the final rule.

One commenter proposed that the FMCSA establish standards for notifying drivers that their CDL had been suspended or revoked or that they had been disqualified from operating a CMV. The FMCSA believes that each State has laws or procedures addressing this issue. Establishing such standards for States to provide notice of the loss of a driving privilege is beyond the scope of this rulemaking.

Thirteen comments raise issues related to the language in the NPRM used to describe the new disqualifying offense of causing a fatality through the negligent or criminal operation of a CMV. To address concerns raised in these comments, the FMCSA has added language to the final rule to clarify the type of offense of which a driver must be convicted to be subject to this disqualification.

One of the proposed serious traffic violation disqualifications that received several comments was ''driving a CMV without a CDL in the driver's possession.'' Ten commenters expressed concern that a driver could be disqualified for not having a CDL with them on a particular day because they may have lost it or had their wallet stolen. The MCSIA addresses this situation in 49 U.S.C. 31301(12)(E): ''Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.'' Although this language was included in the 49 CFR 383.5 definition of this new serious traffic violation, it was inadvertently omitted from Table 2 to § 383.51. To clarify this issue, the FMCSA has added this language in a footnote to Table 2 to § 383.51.

Section 383.52—Disqualification of Drivers Determined To Constitute an Imminent Hazard.

Section 383.52 establishes FMCSA authority for imposing an emergency disqualification of CDL drivers posing an imminent hazard required by Section 201(b) of the MCSIA (49 U.S.C. 31310(f)).

Seven commenters raised questions concerning proposed procedures for imposing an emergency disqualification, many requesting the agency to provide greater detail on how the disqualification determination would be made and asking that various procedural safeguards be included in the rule. The FMCSA believes that the statutory mandate, as reflected in this regulation, together with existing agency administrative procedures, provide sufficient guidance for the agency to make this determination in accordance with accepted due process standards.

Eight comments questioned the proposed criteria to be used by the FMCSA in making a determination of whether or not an emergency disqualification should be imposed on a driver. Based on a review of the comments, the FMCSA has decided not to include in the final rule the six factors proposed in the NPRM to be considered by the agency in making its determination of whether a driver constitutes an imminent hazard. The agency believes that the definition of ''imminent hazard'' which the MCSIA requires the Department to use in making this determination provides sufficient guidance for making this decision.

Although no comments were received on the issue, the agency has decided to delegate the authority for making the imminent hazard determination to the Assistant Administrator, who is also the Chief Safety Officer, rather than the Associate Administrator for Enforcement. This delegation is consistent with current practice, since the authority to impose civil penalties, hear ratings appeals, and make other similar decisions is already delegated to that officer.

One commenter noted that the MCSIA requires the disqualification of a driver determined to constitute an imminent hazard. The FMCSA agrees with this statement, and has accordingly amended the final rule to state that a driver must be disqualified where the Assistant Administrator finds the driver's continued operation of a CMV poses an imminent hazard.

Nine comments focus on the question of who should be notified that a driver has received an emergency disqualification. The statute does not require the FMCSA to notify a driver's State of licensure of an emergency disqualification, and one State objects to being required to maintain this information on a driver's record. Nonetheless, the FMCSA believes requiring a notification to the State of licensure of a driver's emergency disqualification and requiring such information to become a part of the driver's permanent record is a logical extension of imposing the emergency disqualification.

Three commenters requested the FMCSA to specifically describe how this information will be transmitted to the driver's home State. The FMCSA does not believe such details should be included in this rulemaking. The agency is working closely with AAMVAnet to develop a new code to identify a Federal CDL disqualification. Once such a code has been developed, it should facilitate the electronic transmission of this information to the State where the disqualified driver is licensed, and make this information readily available to State law enforcement and licensing agencies checking the CDLIS on a CDL driver's status.

Section 383.71—Driver Application Procedures.

Section 383.71 is being amended to require applicants for an initial CDL, and those transferring or renewing a CDL to provide the State with the name of all States where they have previously been licensed to drive any type of motor vehicle so that the State may obtain the applicant's complete driving record in accordance with Section 202(a) of the MCSIA (49 U.S.C. 31311(a)(6)). Section 383.71(a)(6) is also being amended to clarify that the term ''disqualification'' applies only to sanctions under § 383.51 and that the other licensing sanctions are based on actions taken under State law. The comments received addressing this new requirement, which falls mainly on the States, will be discussed in the commentary to the next section and § 384.206.

Section 383.73—State Procedures.

Section 383.73 is being amended to require the State to request the complete driving record of applicants for an initial license, renewal or transfer of a CDL from all States where the applicant has previously been licensed to drive any type of motor vehicle. Eight comments strongly support the expanded driver records check, while an additional 11 point out potential problems and propose a few changes. Comments on the time period that driver records must be retained by a State are discussed in the commentary for § 384.206.

One commenter asked why the new driver license check of all States in which a driver held any type of driver's license had to be performed on drivers who had already received a CDL. The FMCSA believes that Congress expanded the record check to all CDL drivers, both those already licensed as well as new CDL applicants, to be sure that the issuing State obtains a complete driving record for every CDL driver it licenses. In analyzing the comments received in response to this provision, the FMCSA agrees that once this record check of all States where a driver held any type of driver's license has been conducted for every CDL driver, and in light of the fact that the Federal regulations require all future convictions to be forwarded to and recorded on the driver record of the State where a CDL driver is licensed, requiring the States to conduct this expanded State record check after the initial CDL renewal would serve no useful purpose. Accordingly, the FMCSA is amending § 383.73(a)(3)(iv) of the final rule to limit this record check to CDL drivers renewing their license for the first time after the effective date of this rulemaking, provided that a notation is made on the driver's record that this expanded driver record check has been made and the date it was done.

Section 383.93—Endorsements.

Section 383.93 is being amended to add a new paragraph for the school bus endorsement mandated by Section 214 of the MCSIA and specifying that applicants must pass both a knowledge and a skills test to obtain this endorsement. Comments related to the proposed school bus endorsement are discussed in the next section.

Section 383.123—Requirements for a School Bus Endorsement.

Section 214 of the MCSIA requires the FMCSA to create a new endorsement that CDL holders must obtain to operate a school bus. To implement this new endorsement, the FMCSA has added definitions of ''school bus'' and ''fatality'' to 49 CFR 383.5; amended other provisions of part 383 to recognize the new school bus endorsement; added a license code for the endorsement; and specified that applicants must pass both a knowledge and a skills test to obtain the endorsement. This section establishes the minimum knowledge and skills test requirements for this new endorsement.

Seven of the comments support, while two oppose, the new school bus endorsement. An issue raised by three commenters is whether States such as California, which already have a comprehensive school bus licensing or certification program in place, need to comply with the requirements of this rulemaking. As with other CDL requirements found in 49 CFR part 383, the new school bus testing standards are intended to establish a minimum standard. States are free to establish more stringent standards for CDL drivers they license. States with a school bus licensing program that meets or exceeds the FMCSA requirements in 49 CFR 383.123(a) may, therefore, continue to license school bus drivers in accordance with that program. For the sake of national uniformity and consistency, they must, however, comply with the school bus endorsement requirements of 49 CFR 383.153(a)(9)(vi).

Nine commenters, primarily those representing school transportation agencies and affiliated associations, expressed their belief that the school bus endorsement should be a stand-alone endorsement, encompassing all current requirements of a passenger vehicle endorsement. The practical effect of adopting this recommendation would be to restrict those drivers who obtain a school bus endorsement from operating any other type of passenger-carrying CMV without taking additional knowledge and skills tests. The argument in support of this proposition is that companies and government entities hiring school bus drivers often pay the cost of training drivers, only to have them leave for other employment after receiving this training and obtaining their passenger endorsement. While this may be a practical economic issue, the FMCSA believes that Congress established the school bus endorsement to promote the safe operation of school buses, not to restrict a driver's future employment opportunities. Issues related to restricting the future employment of such drivers should be addressed through agreements between the parties. Based upon this analysis, the FMCSA declines to incorporate the passenger endorsement requirements into the school bus endorsement.

In the July 22 NPRM, the FMCSA proposed including a provision in § 383.123 giving States the option of not requiring applicants for the school bus endorsement to take the skills test where the applicant had past experience driving a school bus and met the safety criteria established in that section. The agency believes that such a ''grandfather clause,'' which proved successful during the implementation of the CMVSA, incorporates appropriate experience and safety requirements to accomplish the objective of the MCSIA without imposing an undue burden on the States.

Thirteen comments received expressed strong support for grandfathering experienced drivers, although there were a few suggestions for changes to these proposed requirements. Based on the comments, the FMCSA has amended the text to clarify these criteria in the final rule.

Section 383.153—Information on the Document and Application.

Section 383.153 adds a license code for the proposed school bus endorsement. One State and the American Association of Motor Vehicle Administrators express concern that some States already use an ''S'' endorsement and asked the FMCSA to select another designation for the new school bus endorsement. Based on the fact that only two commenters raised this issue, the FMCSA does not believe adopting an ''S'' endorsement will impose an undue burden on those few States that may already use it for some other purpose. Since States use a wide variety of letters for various other non-Federal endorsements or purposes, there is also a likelihood that any alternative letter designation proposed by the FMCSA for the school bus endorsement would already be used by one or more States. For these reasons, the FMCSA will include the ''S'' endorsement for school bus drivers in the final rule.

Section 384.107—Matter Incorporated by Reference.

The FMCSA is incorporating by reference the AAMVAnet publication *CDLIS State Procedures Manual* cited in 49 CFR 384.231(d) Recordkeeping requirements. A discussion of the analysis for this action, a complete description of the document, and the reasons for its incorporation can be found in the commentary to § 384.231.

One comment seeks clarification on whether the reference to CDLIS in the May 4 NPRM preamble discussion of the ''Number of CDL citations'' means the central site or the overall system. The reference to CDLIS in the NPRM is to the overall system.

Another comment asks whether the FMCSA would consider comments on the AAMVAnet State Procedures Manual, which is being incorporated by reference into the Code of Federal Regulations. The FMCSA received no comments on the Manual, but would not have considered comments on this document because no changes to it were being proposed.

Section 384.203—Driving While Under the Influence.

The FMCSA has removed a provision titled ''Substantial Compliance by States,'' from 49 CFR 383.51(f) and added it to this section, where it more appropriately belongs. It is designated 49 CFR 384.203(b) and (c).

Section 384.206—State Record Checks.

As previously discussed in the commentary to 49 CFR 383.73, Section 202(a) of the MCSIA requires States to request the applicant's driving record from each State that issued him or her any kind of driver's license [49 U.S.C. 31311(a)(6)] before issuing or renewing a CDL. The FMCSA is amending §§ 383.71, 383.73 and 384.206 to incorporate these new requirements.

Five commenters asked how far back this record check should extend. After reviewing the issue and noting that National Driver Register (NDR) guidelines require numerous offenses to remain on a driver's record for a period of 10 years, the FMCSA has amended § 384.206 to limit this expanded record check to the 10 years preceding the date of the driver's license application.

Section 384.208—Notification of Disqualification.

Section 384.208 has been amended to comply with Section 202(b) of the MCSIA, which amended 49 U.S.C. 31311(a)(8) to require that States include and record the violation that resulted in the driver's disqualification, or the revocation, suspension or cancellation of his or her CDL, as part of the notification they were previously required to make under this statutory provision. This notification must be made no later than 10 days after the driver is disqualified.

Because the only comment addressing this issue was favorable, the FMCSA is incorporating it into the final rule as proposed.

Section 384.209—Notification of Traffic Violations.

Section 202(c) of the MCSIA clarifies a State's responsibility for notifying the State where an out-of-state CDL driver is licensed whenever such a driver is convicted of violating any State or local law relating to motor vehicle traffic control (other than a parking violation), even if the driver was operating a non-CMV when the offense was committed [49 U.S.C. 31311(a)(9)]. The MCSIA also requires the State where the offense was committed to notify the State where the driver is licensed if the offense was committed in a CMV, even if the driver did not have a CDL at the time. The MCSIA further requires that this notification be made no later than ten days after the driver's conviction. This section implements these requirements.

Eighteen commenters expressed their views on this provision, with industry and safety groups generally supporting the proposed 10-day conviction reporting period and States raising numerous concerns associated with implementing this requirement. Much of the States' concerns focused on the fact that driver licensing and law enforcement agencies are held accountable for actions of the State courts to meet the 10-day conviction-reporting requirement.

The FMCSA first notes that this 10-day reporting requirement is not new. Its origins are rooted in the CMVSA itself. In the final rule establishing the standards States must meet to be in compliance with that Act, published in the **Federal Register** on May 18, 1994 at 59 FR 26029, the FHWA recognized that it would be difficult for many States to meet this 10-day reporting standard, and accordingly delayed implementation of the requirement. The agency cautioned in that rulemaking, however, that this important issue would be the subject of future rulemaking.

Three other commenters object to the proposed extended implementation period for States to comply with the conviction reporting requirements of this section. As the agency stated in the July 27 NPRM, based on its current knowledge of State capabilities to obtain and transmit driver conviction information, the FMCSA believes that to immediately impose a ten-day time period would place an unreasonable burden on the States. Accordingly, the NPRM proposed that this 10-day time limitation be phased in over six years according to the following time schedule. Within three years of the effective date of the final rule, notification would be required within 30 days of the conviction. Within six years, notification would be required within ten days. States are encouraged to move as quickly as possible to meet the 10-day requirement and should seek to do so wherever possible. After considering the comments, the FMCSA has decided to adopt the phase-in proposal.

In light of the importance of States obtaining timely conviction information on CDL drivers who are convicted of offenses while driving in other States, it is critical that States make every effort to meet the compliance schedule established in this rulemaking. The FMCSA urges all State agencies to work together to accomplish this objective.

One commenter also asked whether the 10-day notification period began when the verdict was rendered or at the time the conviction became final. The FMCSA defers to State law and procedure to determine this issue. If, as is the case in many jurisdictions, a trial court verdict does not become a final conviction for a stated period after the verdict to allow a defendant time to appeal, the conviction information must be transmitted 10 days after the appeal window closes, or if an appeal is filed, after the conviction is upheld.

Section 384.210—Limitation on Licensing-Prohibition on State Issuing Hardship Licenses.

Section 384.210 is being amended in accordance with provisions of Section 202(d) of the MCSIA (49 U.S.C. 31311(a)(10)(B)) to prohibit a State from issuing a special commercial driver's license or permit (including a provisional or temporary license) to any CDL driver who is disqualified or who has his or her non-commercial driver's license or driving privilege revoked, suspended or canceled.

Of the ten comments addressing this issue, a few State licensing and law enforcement agencies point out the difficulty of getting any legislation passed and the fact that they do not control court actions in issuing such licenses. While cognizant of the need for coordination between judicial, executive, and legislative branches that implementing and complying with this provision may impose on the States, the FMCSA notes that this action is required by the MCSIA and urges all States to take appropriate action to bring their laws, regulations and ajudicatory procedures into compliance with this new requirement for identifying and removing drivers whose violations warrant such action. The statute anticipates and FMCSA believes that the branches of government can work cooperatively to address this public safety issue.

Section 384.225—Record of Violations.

Section 202(f) of the MCSIA requires the States to maintain a driver history record for CDL drivers of all convictions of State or local motor vehicle traffic control laws while operating any type of motor vehicle [49 U.S.C. 31311(a)(18)]. It also specifies that this information must be made available to authorized CDLIS users including the Secretary of Transportation, States, drivers, employing motor carrier and prospective employing motor carriers, as part of normal operating practices. While the MCSIA does not specify a retention period for information on these convictions and other licensing actions, a minimum retention period of three years is included in this rule to promote uniformity among the States. Although Section 31311(a)(18) requires a driver history record only for CDL drivers, Section 31311(a)(9) goes beyond that. When an out-of-State driver commits a violation, paragraph (a)(9) requires the State where the violation occurred to notify the State that issued his/her driver's license. This rule applies both to CDL holders and to drivers operating a CMV (illegally) without a CDL. Because a State could not provide notification of a violation by a CMV driver who did not have a CDL without first entering the conviction in the driver information system, the FMCSA has concluded that this requirement is implicit in paragraph (a)(9) despite the fact that no such requirement is included in paragraph (a)(18). Stated alternatively, § 384.225(a) (''CDL holders'') is based on 49 U.S.C. 31311(a)(18), while § 384.225(b) (''Non-CDL holders'') is based on 49 U.S.C. 31311(a)(9).

Seven comments support the requirement for States to enter all traffic convictions on driver records; however, three States questioned which driving records should be maintained and proposed alternative retention periods. Paragraph (d) of § 384.231 requires States to maintain driver records for CDL drivers on the CDLIS for the time periods the FMCSA finds necessary to enforce the disqualifications called for in §§ 384.215 through 384.219 and §§ 384.221 through 384.224. These time periods range from a minimum of 3 years for serious traffic violations and railroad-highway grade crossing violations to life for major alcohol, drug and felony offenses. Since the minimum retention period for a disqualifying offense is currently set at 3 years, the FMCSA believes that a minimum record retention period of 3 years for all other offenses in a CMV and non-CMV is reasonable. It is a good balance between allowing authorized users to see the current driving record of a CDL driver without placing an undue burden on the States to carry convictions on a driving record that will not affect any future driver disqualification action. The more serious the offense, the longer the conviction will remain on the driving record for review by authorized users of CDLIS. Based upon the fact that the CDLIS driver record retention standards are well known and adhered to by all States, the FMCSA does not believe any additional record retention period needs to be included in this rulemaking.

Another issue raised in four of the comments was that the authorized agents of people and entities designated in the MCSIA as having access to driver record information should also be allowed to obtain this information. The FMCSA agrees that the MCSIA permits access to these records by agents, and has amended the final rule to reflect this fact.

One State asked whether they will be allowed to charge motor carriers for providing driver history information. The FMCSA believes this is a decision for each State to make consistent with the object of this rulemaking. Accordingly, it has not been addressed in this rulemaking.

Section 384.226—Prohibition on Masking Convictions.

Section 202(g) of the MCSIA prohibits the practice of masking convictions required to be maintained by or transmitted to the State where the driver is licensed [49 U.S.C. 31311(a)(19)]. A Joint Explanatory Statement issued by Congress in conjunction with the MCSIA (145 Cong. Rec. H12870–12874 (daily ed. Nov. 18, 1999; 145 Cong. Rec. S15207–15211 (daily ed. Nov. 19, 1999)) makes clear that this new provision is intended to prohibit States not only from masking convictions, but also from using diversion programs or any other disposition that would defer the listing of a guilty verdict on a CDL driver's record. This provision also requires that records of such conviction information be made available to all authorized parties and government entities. The FMCSA urges State Executive Branch agencies to work with the State Judicial Branch to eliminate the practice of masking. This practice allows unsafe drivers to continue to pose a risk to other motorists by allowing their continued operation on the nation's highways.

Section 384.231—Satisfaction of State Disqualification Requirements.

All paragraphs are amended to replace the word ''shall'' with the word ''must.''

The FMCSA is amending paragraph (a) to include cross references to the disqualifications resulting from railroad-highway grade crossing violations added as 49 CFR 384.223 by a final rule published on September 2, 1999 (64 FR 48104), and new §§ 384.222 and 384.224 promulgated by this final rule.

Paragraph (b)(2) is being amended to remove the May 18, 1997, compliance date from the heading of the paragraph because that date has passed and the rule now applies to all non-CDL holders. The FMCSA is also replacing the undefined term ''non-CDL holder'' with ''a person required to have a CDL'' within the heading and body of paragraph (b)(2) because the term ''non-CDL holder'' could include a person who is not even required to have a CDL. The intent of this paragraph is to require each State to disqualify any person required to have a CDL who was convicted of a disqualifying offense in a CMV under § 383.51.

Paragraph (d) is being amended to incorporate by reference the current version of the AAMVAnet State Procedures Manual. Each State-licensing agency has a copy of the most recent version of the CDLIS State Procedures Manual. A copy of this CDLIS State Procedures Manual is also in the public docket.

Section 384.401—Withholding of Funds Based on Noncompliance.

In order to avoid the withholding of certain Federal aid highway funds, States must be in substantial compliance, as defined in 49 CFR 384.301, with the standards set forth in Subpart B of part 384. Section 103(e) of the MCSIA also requires the FMCSA to withhold Motor Carrier Safety Assistance Program (MCSAP) funds from States that fail to be in substantial compliance with these standards. This section incorporates this new sanctioning requirement. A discussion of the comments on this requirement can be found in the commentary to § 350.217.

Section 384.405—Decertification of State CDL Program.

Section 203 of the MCSIA requires the FMCSA to prohibit a State from issuing, renewing, transferring, or upgrading CDLs if the agency has determined that the State is in substantial noncompliance with the requirements of Section 31311 of title 49 U.S.C. (49 CFR part 384, subpart B). Because of the severity of this new sanction and the potential effect on drivers and motor carriers located in States found to be in noncompliance, it is envisioned that this penalty will be used only after other attempts to bring the State into substantial compliance with CDL requirements have failed. As noted in the commentary to § 383.23, the FMCSA envisions this sanction being invoked only in rare situations.

To mitigate the impact on drivers and motor carriers in States that have been decertified, the MCSIA is adding a provision to 49 CFR 383.7 and 384.405(h) allowing drivers licensed before a State was decertified to continue to operate CMVs, as long as their licenses remain valid. The FMCSA has also included language in 49 CFR 383.23(b)(2) authorizing States that are in substantial compliance to issue nonresident CDLs to drivers living in States that have been decertified.

In response to one comment raised concerning how other States will know that a State has been decertified, the FMCSA will notify all States whenever a State has been decertified or recertified.

Section 384.407—Emergency CDL Grants.

Section 384.407 implements Section 103(d) of the MCSIA (49 U.S.C. 31107(c)) by authorizing the FMCSA to provide emergency CDL grants to assist States whose CDL programs may fail to meet the compliance requirements of 49 U.S.C. 31311(a) [49 CFR part 384, subpart B]. These grants of up to $1,000,000 per State are subject to the annual appropriation of funds by Congress for information system grants.

Two comments to the NPRM addressed this issue. One proposed that only States making a good faith effort to comply with the CDL requirements be eligible to receive these grant funds and the other proposed that the traditional 20% State grant-matching requirement be waived. The FMCSA agrees with the first of these suggestions and has added language to the final rule clarifying that only States making a good faith effort to comply with the CDL requirements are eligible to receive these grants. As for the second comment, these discretionary grants do not require a State matching contribution and § 384.407 includes no such implication.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, and is not significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has not been reviewed by the Office of Management and Budget. Nonetheless, the FMCSA prepared a regulatory evaluation of this rule. This section summarizes the regulatory evaluation. A copy of the complete regulatory evaluation is available in the docket described above under **ADDRESSES.**

The regulatory evaluation addresses seven of the provisions contained in this rule, primarily those provisions that FMCSA expected would have economic costs to State government agencies and the motor carrier industry. These provisions include:

- *Section 201(a) of MCSIA—Disqualification for Driving While Suspended, Disqualified and Causing a Fatality.* This provision creates two new Federal disqualifying offenses: (1) Driving a CMV while revoked, suspended, or cancelled, or while the driver is disqualified based upon the driver's operation of a CMV; and (2) causing a fatality through the negligent or criminal operation of a CMV. *
- *Section 201(b) of MCSIA—Emergency Disqualification of Drivers Posing an Imminent Hazard.*
- *Sections 201(b) and 202(h) of MCSIA—Disqualification for Violations Committed while Driving a Non-CMV.*
- *Section 201(c) of MCSIA—Expanded Definition of Serious Traffic Violations.*
- *Section 202(a) of MCSIA—Expanded State Driver Record Check.*
- *Section 202(c) of MCSIA—New Notification Requirements.* This section requires States to notify CDLIS and the State that issued the CDL no later than 10 days after disqualifying a CDL holder from operating a CMV (or revoking, suspending, or canceling a CDL) for at least 60 days and the reason for the action.
- *Section 202(g) of MCSIA—Masking Prohibition.* This section of MCSIA prohibits the practice of masking convictions and thereby requires the record to be maintained or transmitted to the State where the driver is licensed.

As stated, the regulatory evaluation addresses seven ''major'' provisions of the rule. Although the remaining nine provisions were initially examined, FMCSA determined through a preliminary evaluation that these nine would not impose significant economic costs on State government agencies or the motor carrier industry.

FMCSA derived benefits estimates for this rule by examining the number of truck-related crashes, using average costs for various types (e.g. fatal, injury, and property-damage-only) that must be avoided during the analysis period (2003–2011) for this rule to be cost effective. Note that no crash reduction is assumed to occur during the first year of implementation (2002). Results of this analysis are contained in Table 1 below.

TABLE 1.—SUMMARY OF FINAL RULE COSTS AND OTHER RELEVANT FACTORS

Net Present Value of Costs, 2002–2011	$373 million	
Net Present Value of Benefits if 700 Truck-Related Crashes are Avoided Annually between 2003–2011	$404 million	
Type of truck-related crash	Average cost per crash[1]	Annual Reduction Required[2]
Fatal Crashes involving 7 ''Large Trucks''	$3,419,202	7
Injury-Related ''Large Truck'' Crashes	217,000	147
Property-Damage-Only ''Large Truck'' Crashes	11,300	546

[1] From ''Cost of Large-Truck and Bus-Involved Crashes, Final Report for the Federal Motor Carrier Safety Administration, Zaloshnja, Miller, & Spicer, 2000.

[2] For discounted benefits of the rule to exceed discounted costs, a total of 700 truck-related crashes (e.g., fatal, injury, & PDO combined) must be avoided annually during the last nine years of the analysis period (2003–2011). This reduction represents about 0.15 percent of the total number of reported truck-related crashes annually. The reductions are proportional to the frequencies found by ''Trends in Motor Vehicle Crashes'' (FMCSA, December 2000).

Costs

The total discounted costs from each provision's implementation are included in Table 2 below.

TABLE 2.—TOTAL DISCOUNTED COSTS, BY MCSIA SECTION AND TITLE

MCSIA section	Final rule section title	Total discounted costs (millions of discounted dollars)
201(a)	''* * * Driving While Suspended * * *	$89.1
201(b)	''* * * Imminent Hazard''	8.3
201(b) & 202(h)	''Disqualifications for non-CMV Offenses''	169.7
201(c)	''Expanded Definition of Serious Traffic Violations''	43.3
202(a)	''Expanded Driver Record Check''	42.5
202(c)	''New Notification Requirements''	3.8
202(g)	''Masking Prohibition''	16.3
Total	All Seven Provisions	373

While the costs associated with each provision are somewhat unique, the types of costs generally fall into one of two categories: start-up costs (Table 3) or ongoing costs (Table 4).

TABLE 3.—TOTAL ''FIRST-YEAR'' COSTS OF FINAL RULE PROVISIONS, BY MCSIA SECTION

MCSIA section	Final rule section title	Total first-year costs (millions of discounted dollars)
201(a)	''* * *Driving While Suspended* * *''	$1.61
201(b)	''* * *Imminent Hazard''	2.15
201(b) & 202(h)	''Disqualifications for non-CMV Offenses''	1.73
201(c)	''Expanded Definition of Serious Traffic Violations''	1.41
202(a)	''Expanded Driver Record Check''	1.46[1]
202(c)	''New Notification Requirements''	0.58[1]
202(g)	''Masking Prohibition''	2.42
Total		11.4

[1] Information system implementation costs were spread over three calendar years.

TABLE 4.—TOTAL ''LATER-YEAR'' COSTS OF FINAL RULE, BY MCSIA SECTION

MCSIA section	Final rule section title	Total later-year costs (millions of discounted dollars)
201(a)	''* * *Driving While Suspended * * *''	$87.5
201(b)	''* * *Imminent Hazard''	6.2

TABLE 4.—TOTAL "LATER-YEAR" COSTS OF FINAL RULE, BY MCSIA SECTION—Continued

MCSIA section	Final rule section title	Total later-year costs (millions of discounted dollars)
201(b) & 202(h)	"Disqualifications for non-CMV Offenses"	168.0
201(c)	"Expanded Definition of Serious Traffic Violations"	41.9
202(a)	"Expanded Driver Record Check"	41.0
202(c)	"New Notification Requirements"	3.2
202(g)	"Masking Prohibition"	13.9
Total		361.7

Each of the seven major provisions examined is analyzed separately here, since many of the annual or ongoing costs of the provisions are somewhat unique (e.g., effects on driver suspensions and disqualifications).

Section 201(a) of MCSIA—Disqualification for Driving While Suspended, Disqualified and Causing a Fatality—creates two new disqualifying offenses under the FMCSRs. They are: (1) Driving a CMV while revoked, suspended, or cancelled, or while the driver is disqualified based upon the driver's operation of a CMV; and (2) causing a fatality through the negligent or criminal operation of a CMV. First-year information system development and implementation costs average $36,234 per State. Extrapolating to all fifty States and the District of Columbia results in total system development and implementation costs of $1.61 million when discounted to the year 2002. Annual costs thereafter include additional data entry by State government staff and new driver disqualifications resulting from new FMCSR offenses. The FMCSA assumes 10 percent of CDL drivers with suspended licenses (or 3,864) will violate the new provision and will subsequently receive disqualifications of one year on average (or 2,080 working hours) and that these drivers will secure alternative employment at a 10 percent wage reduction.

We expect 4,296 new CDL drivers to be disqualified annually either for being convicted of driving while suspended or for causing a fatality through negligent or criminal operation of a CMV, for an average of one year each, and that each accepts alternative employment at a 10 percent wage reduction. Additionally, the FMCSA included the costs for data entry and for each CDL driver's record to be checked by a patrolman, costing about $450,000 (undiscounted, combined) annually for the period 2005 through 2011. The present value of total costs for this section is $89.1 million.

Section 201(b) of MCSIA—Emergency Disqualification of Drivers Posing an Imminent Hazard—authorizes the Secretary to impose an emergency disqualification on drivers whose continued operation of a CMV the Secretary determines would constitute an imminent hazard. In cases where the Secretary proposes emergency disqualification beyond 30 days, the driver must be notified of the proposed action and provided the opportunity for a hearing. We assume that all such drivers would request a hearing and include: (a) Costs to review CDL drivers' records for IH designation; (b) costs to hold hearings for each driver when an IH designation is assigned to a CDL driver; (c) costs to CDL drivers who are given the IH designation; and (d) data entry costs for State employees where the IH designation is applied. These discounted "later year" costs (using OMB-prescribed seven percent discount rate) total $6.2 million, for the period 2004 through 2011. Therefore, with the $2.15 million set-up costs, the present value of costs of Section 201(b) of MCSIA total $8.3 million.

Sections 201(b) and 202(h) of MCSIA—Disqualification for non-CMV Violations'prohibits the holder of a CDL from operating a CMV if the CDL holder commits certain offenses while operating a non-CMV. First-year costs for this rule should total approximately $1.73 million (present value); most of these are for information system developments and modifications by State agencies. Annual costs are estimated at $168.7 million (present value) and include wages lost by an average of 9,661 CDL holders who would be suspended or disqualified because of this rule. FMCSA estimates that those CDL holders who would be disqualified because of this rule would find alternative work at a 10 percent reduction in hourly wages, for an average of 317 days, over the 10-year analysis period. The total cost of this provision is approximately $170.4 million (present value) over the ten-year analysis period for 2004 through 2013, using a discount rate of 7 percent.

Section 201(c) of MCSIA—Expanded Definition of Serious Traffic Violations—adds three new offenses to the FMCSR definition of serious traffic violations. These new violations include: (1) Driving a CMV when the driver has not obtained a CDL; (2) driving a CMV without a CDL in the driver's possession; and (3) driving a CMV without the driver having met the minimum testing standards for the specific class of CMV being operated, or for the type of cargo being transported in the vehicle. This increases the total number of serious traffic violations, as defined in Part 383 of the FMCSRs, from five to eight. System development and implementation costs include hardware, software, and personnel costs to implement this provision and average $29,643 per State. Extrapolating these results to all fifty States and the District of Columbia results in a discounted cost of $1.41 million. Annual, or ongoing, costs for this provision include: (a) Costs to patrolmen to write the convictions for 3 new serious traffic violation offenses; (b) costs to input the new conviction data into CDL drivers' records and report disqualifying information to CDLIS; and (c) costs to CDL drivers who will be disqualified as a result of the 3 new serious traffic violations. The present value of these annual costs is $41.9 million. That brings the total cost for this section to $43.3 million.

Section 202(a) of MCSIA—Expanded Driver Record Check—first-year costs equal approximately $1.46 million (present value) for all fifty States and Washington, DC. Discounted "later year" costs total $41.0 million for the period 2004 through 2011. Therefore, present values costs of Section 202(a) of MCSIA total $42.5 million.

Section 202(c) of MCSIA—New Notification Requirements—requires States to notify CDLIS and the State that issued the CDL no later than 10 days after disqualifying a CDL holder from operating a CMV (or revoking, suspending, or canceling a CDL) for at least 60 days. Information system development and implementation costs include hardware, software, and personnel costs and average $34,339 per State. Extrapolating these results to all fifty States and the District of Columbia results in total system development and implementation costs of Section 202(c) of MCSIA of $1.75 million. This regulation allows these costs to be spread over three years, so the first-year costs are just less than $0.6 million. Annual, or ongoing, costs begin in 2005 and include the on-going costs to State government agencies to ensure that CDL convictions are consistently transferred within the 10-day window and for States to transmit specific conviction information with each driver disqualification record. FMCSA assumes that this provision would not result in any new disqualifications, since it primarily addresses the amount of CDL holder information transmitted. Discounted later year costs total $3.2 million for the remaining two years of the implementation and the period 2005 through 2011 combined. Therefore, present value costs for Section 202(b) of MCSIA total $3.8 million.

Section 202(g) of MCSIA—Masking Prohibition—prohibits the practice of masking convictions and thereby requires the CDL record to be maintained or transmitted to the State where the driver is licensed and be made available to all authorized parties and government entities. Information system development and implementation costs include hardware, software, and personnel costs and average $47,393 per State. Extrapolating these results to all fifty States and the District of Columbia results in total system development and implementation costs of $2.42 million. Annual, or ongoing, costs begin in 2002 and are primarily comprised of wage reduction costs to those CDL holders who will be disqualified because conviction information is being transmitted to their home State licensing agency. Assuming that States that mask convictions are similar to States that do not mask, and that States mask all convictions if they mask at all, the maximum number of FMCSR-required withdrawal convictions that could be unmasked would be 5,173 as a result of this provision's implementation. That would result in wage reductions of approximately $4.3 million annually. Since it is unrealistic to assume that all convictions are masked or that no convictions are masked, we assume that half are masked. The present value of costs from the ''Masking Prohibition'' total $16.3.

Benefits: Crashes Avoided for the Final Rule To Be Cost Effective

The primary societal benefits expected from this rule are the truck-related crashes that one would expect to be avoided due to the additional CMV operators (mainly CDL holders) who will be suspended or disqualified for violations of the new disqualifying offenses and serious traffic violations. It was not possible to estimate the specific number of truck-related crashes that would be avoided from implementing each provision of this rule, given that FMCSA has no data directly linking these specific FMCSR-defined offenses and truck-related crashes. However, FMCSA did use cost data on truck-related crashes from Zaloshnja, Miller, and Spicer (''The Costs of Large Truck- and Bus-Involved Crashes,'' 2000) to derive an estimate of the total number of truck-related crashes that would have to be avoided per year (during the analysis period) for this rule to be cost effective (i.e. for discounted benefits to equal/exceed discounted costs). Those benefits are found in Tables 1 through 4 above.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We do not believe that these proposals meet the threshold values for requiring an RFA analysis, since the anticipated impact is fairly small. Nonetheless, because of the public interest in these proposals, the FMCSA has prepared this RFA analysis.

(1) *A description of the reasons why action by the agency is being considered.* The CDL program has been in operation since 1986. Since that time, potential process improvements to enhance car safety have been identified. This rule implements some of those changes.

(2) *A succinct statement of the objectives of, and the legal basis for, the proposed rule.* In 1999, Congress passed the Motor Carrier Safety Improvement Act (MCSIA). Sections of that Act direct changes in the CDL program. The changes in procedures are a direct response to this legislation. FMCSA hopes that these changes will make the CDL program more effective in preventing dangerous drivers from continuing to drive and will result in improved safety by improving the performance of drivers and removing unsafe drivers from the road.

(3) *A description and, where feasible, an estimate of the number of small entities to which the rule will apply.* In the trucking industry, there are a few large firms with many employees and many very small firms with only a handful of employees. To the extent which the rule imposes costs on firms, these small firms will endure the largest portion of that burden. The incidence of driver disqualification is not likely to be different among firms, however large firms are better able to spread the risk of having a driver disqualified.

(4) *A description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.* Although these small entities will have to keep records on all of their employees' status regarding the CDL, there is no additional administrative cost borne by them because they already have to maintain those records under the current system. The avenue through which these small businesses might be adversely affected is a reduction in the number of available drivers who can qualify under the stricter rules. If that number is significantly reduced, employers may find that they have to pay drivers a premium wage in order to continue to provide their level of service.

(5) *Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.* The FMCSA is not aware of any other rules or procedures that duplicate or conflict with this rule.

(6) *Significant Alternatives Available.* Allowing differences in compliance or reporting for small entities would be contrary to the intent of Congress in issuing this mandate. The purpose of MCSIA is to strengthen and standardize the CDL program. Another key component of the CDL program is national uniformity and consistency in its administration. This promotes effective enforcement.

We certify that the rule will not have a significant impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under E.O. 13045, ''Protection of Children from Environmental Health Risks and Safety Risks.'' This rule is not economically significant and does not involve an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have substantial direct Federalism implications that would limit the policymaking discretion of the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions, and any additional administrative cost borne by the States should be negligible.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. An analysis of this rule has been made by the FMCSA, and it has been determined that it will affect the information collection burden associated with the currently-approved information collection covered by OMB Control No. 2126–0011, titled ''Commercial Driver Licensing and Test Standards.'' The OMB approved the most recent update of this information collection on October 3, 2001, at 620,802 burden hours. The approval period runs through October 31, 2004.

The implementation of this final rule will require the State DMVs to enter additional information into CDLIS—whether the CDL holder committed the violation in a CMV or a non-CMV. We estimate the time required to complete this additional information in CDLIS to be approximately 2 seconds per applicant. The currently-approved estimate for completing a CDLIS entry is 2 minutes. We believe the 2 additional seconds can be folded into the 2 minutes and that the 2-minute estimate is still accurate. Therefore, there is no increase in burden hours from this provision.

The currently-approved estimate of the number of violations is 1 violation every 3 years for the 10,000,000 CDL holders. We estimate that with the additional violations, approximately one-quarter of the 10,000,000 CDL holders (2,500,000) will receive an additional violation over the 3-year period. This would be 833,333 additional violations. The currently-approved estimate of staff time to input the new violations into State systems and transfer to CDLIS is 2 minutes. Therefore, the additional burden created by this final rule is 27,778 burden hours [833,333 x 2 minutes/60 minutes].

Start-up costs include information system, or computer, costs incurred by State government agencies to implement the new CDL program provisions under MCSIA. Specific examples include costs required to establish or modify computer systems within each State to log, review, and transfer the new serious traffic violations identified under MCSIA. Additionally, these costs include information systems costs to implement the new notification requirements for States under MCSIA. Such costs include hardware, software, and personnel costs to establish or modify computer systems within each State. Estimates of the combined start-up, or first-year, costs for the 50 States and the District of Columbia are shown below.

Final rule section title	Total first-year costs (in millions)
''* * * Driving While Suspended * * *''	$1.61
''* * * Imminent Hazard''	$2.15
''Disqualifications for non-CMV Offenses''	1.73
''Expanded Definition of Serious Traffic Violations''	1.41
''Expanded Driver Record Check''	1.46
''New Notification Requirements''	0.58
''Masking Prohibition''	2.42
Total	11.4

At NPRM stage, we requested comments on the information collection aspects of this rule. No comments regarding the information collection burden hours were received. You may submit any additional comments on the *information collection burden* addressed by this final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by August 30, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration is a new administration within the Department of Transportation. We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this rule under the NEPA and DOT Order 5610.1C. We believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action. For these reasons, a Statement of Energy Effects under Executive Order 13211 is not required.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*)

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Incorporation by reference, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, parts 350, 383, 384, and 390 as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. Revise the authority citation for part 350 to read as follows:

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31312, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

2. Add § 350.217 to subpart B to read as follows:

§ 350.217 What are the consequences for a State with a CDL program not in substantial compliance with 49 CFR part 384, subpart B?

(a) A State with a CDL program not in substantial compliance with 49 CFR part 384, subpart B, as required by 49 CFR part 384, subpart C, is subject to the loss of all Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under sec. 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106–159, 113 Stat. 1748] and loss of certain Federal-aid highway funds, as specified in 49 CFR part 384, subpart D.

(b) Withheld MCSAP grant funds will be restored to the State if the State meets the conditions of § 384.403(b) of this subchapter.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

3. Revise the authority citation for part 383 to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1766; and 49 CFR 1.73.

4. Revise § 383.3(f)(3)(i)(C) to read as follows:

§ 383.3 Applicability

* * * * *

(f) * * *

(3) * * *

(i) * * *

(C) Has not had *any* conviction for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

* * * * *

5. Amend § 383.5 to revise the definitions of the terms ''disqualification,'' ''driving a commercial motor vehicle while under the influence of alcohol,'' ''non-resident CDL'' and ''serious traffic violation'' and to add the definitions of the terms ''fatality,'' ''imminent hazard,'' ''non-CMV,'' and ''school bus'' in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

Disqualification means any of the following three actions:

(a) The suspension, revocation, or cancellation of a CDL by the State or jurisdiction of issuance.

(b) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(c) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this chapter.

* * * * *

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV—

(a) Driving a CMV while the person's alcohol concentration is 0.04 or more;

(b) Driving under the influence of alcohol, as prescribed by State law; or

(c) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b) or § 392.5(a)(2) of this subchapter.

* * * * *

Fatality means the death of a person as a result of a motor vehicle accident.

* * * * *

Imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

* * * * *

Nonresident CDL means a CDL issued by a State under either of the following two conditions:

(a) To an individual domiciled in a foreign country meeting the requirements of § 383.23(b)(1).

(b) To an individual domiciled in another State meeting the requirements of § 383.23(b)(2).

* * * * *

Non-CMV means a motor vehicle or combination of motor vehicles not defined by the term ''commercial motor vehicle (CMV)'' in this section.

* * * * *

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

Serious traffic violation means conviction of any of the following offenses when operating a CMV, except weight, defect and parking violations:

(a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a CMV in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely;

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control;

(f) Driving a CMV without obtaining a CDL;

(g) Driving a CMV without a CDL in the driver's possession. Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense; or

(h) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

* * * * *

6. Add § 383.7 to subpart A to read as follows:

§ 383.7 Validity of CDL issued by decertified State.

A CDL issued by a State prior to the date the State is notified by the Administrator, in accordance with the provisions of § 384.405 of this subchapter, that the State is prohibited from issuing CDLs, will remain valid until its stated expiration date.

7. Amend § 383.23 to revise paragraphs (a)(2) and (b) to read as follows:

§ 383.23 Commercial driver's license.

(a) * * *

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* (1) If a CMV operator is not domiciled in a foreign jurisdiction which the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part, the person may obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such subparts F, G, and H of this part.[1]

(2) If an individual is domiciled in a State while that State is prohibited from issuing CDLs in accordance with § 384.405 of this subchapter, that individual is eligible to obtain a Nonresident CDL from any State that elects to issue a Nonresident CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part.

* * * * *

8. Revise § 383.51 to read as follows:

§ 383.51 Disqualification of drivers.

(a) *General.* (1) A driver or holder of a CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A driver is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder of a CDL drives a CMV or non-CMV and is convicted of the violations.

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) must not be reinstated.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(1) Being under the influence of alcohol as prescribed by State law * * *.	1 year	1 year	3 years	Life	Life.
(2) Being under the influence of a controlled substance * * *.	1 year	1 year	3 years	Life	Life.

[1] Effective December 29, 1988, the Administrator determined that commercial drivers' licensees issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

TABLE 1 TO § 383.51—Continued

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV * * *.	1 year	Not applicable	3 years	Life	Not applicable.
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72 of this part * * *.	1 year	1 year	3 years	Life	Life.
(5) Leaving the scene of an accident * * *	1 year	1 year	3 years	Life	Life.
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table * * *.	1 year	1 year	3 years	Life	Life.
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year	Not applicable	3 years	Life	Not applicable.
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.	1 year	Not applicable	3 years	Life	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement

(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit * * *.	60 days	60 days	120 days	120 days.

TABLE 2 TO § 383.51—Continued

If the driver operates a motor and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property * * *.	60 days	60 days	120 days	120 days.
(3) Making improper or erratic traffic lane changes * * *.	60 days	60 days	120 days	120 days.
(4) Following the vehicle ahead too closely * * *.	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident * * *.	60 days	60 days	120 days	120 days.
(6) Driving a CMV without obtaining a CDL	60 days	Not applicable	120 days	Not applicable.
(7) Driving a CMV without a CDL in the driver's possession [1].	60 days	Not applicable	120 days	Not applicable.
(8) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days	Not applicable	120 days	Not applicable.

[1] Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

TABLE 3 TO § 383.51—Continued

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If the driver operates a CMV and is convicted of . . .	For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials . . .	No less than 90 days or more than 1 year.	No less than 1 year or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver . . .	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

9. Add § 383.52 to read as follows:

§ 383.52 Disqualification of drivers determined to constitute an imminent hazard.

(a) The Assistant Administrator or his/her designee must disqualify from operating a CMV any driver whose driving is determined to constitute an imminent hazard, as defined in § 383.5.

(b) The period of the disqualification may not exceed 30 days unless the FMCSA complies with the provisions of paragraph (c) of this section.

(c) The Assistant Administrator or his/her delegate may provide the driver an opportunity for a hearing after issuing a disqualification for a period of 30 days or less. The Assistant Administrator or his/her delegate must provide the driver notice of a proposed disqualification period of more than 30 days and an opportunity for a hearing to present a defense to the proposed disqualification. A disqualification imposed under this paragraph may not exceed one year in duration. The driver, or a representative on his/her behalf, may file an appeal of the disqualification issued by the Assistant Administrator's delegate with the Assistant Administrator, Adjudications Counsel, Federal Motor Carrier Safety Administration (Room 8217), 400 Seventh Street, SW., Washington, DC 20590.

(d) Any disqualification imposed in accordance with the provisions of this section must be transmitted by the FMCSA to the jurisdiction where the driver is licensed and must become a part of the driver's record maintained by that jurisdiction.

(e) A driver who is simultaneously disqualified under this section and under other provisions of this subpart, or under State law or regulation, shall serve those disqualification periods concurrently.

10. Revise § 383.53(b)(1) to read as follows:

§ 383.53 Penalties.

* * * * *

(b) *Special penalties pertaining to violation of out-of-service orders*—(1) *Driver violations.* A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $1,100 nor more than $2,750, in addition to disqualification under § 383.51(e).

* * * * *

11. Amend § 383.71 to revise paragraphs (a)(6), (a)(7), (b)(3), (b)(4), and (c)(3); and to add new paragraphs (a)(8), (b)(5), and (c)(4) to read as follows:

§ 383.71 Driver application procedures.

(a) * * *

(6) Certify that he/she is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction;

(7) Surrender the applicant's non-CDL driver's licenses to the State; and

(8) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(b) * * *

(3) If the applicant wishes to retain a hazardous materials endorsement, comply with State requirements as specified in § 383.73(b)(4);

(4) Surrender the CDL from the old State of domicile to the new State of domicile; and

(5) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(c) * * *

(3) If a person wishes to retain a hazardous materials endorsement, pass the test for such endorsement as specified in § 383.121; and

(4) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

* * * * *

12. Revise § 383.73(a)(3) to read as follows:

§ 383.73 State procedures.

(a) * * *

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that the person does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle;

(iii) A check with the National Driver Register (NDR) to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in section 205(a)(3) of the National Driver Register Act of 1982 (23 U.S.C. 401 note); and

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle. *Exception:* A State is only required to make the driving record check specified in this paragraph (a)(3) for drivers renewing a CDL for the first time after September 30, 2002, provided a notation is made on the driver's record confirming that the driver record check required by this paragraph (a)(3) has been made and noting the date it was done; and

* * * * *

13. Revise § 383.77(a)(3) to read follows:

§ 383.77 Substitute for driving skills tests.

* * * * *

(a) * * *

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

* * * * *

14. Amend § 383.93 to revise paragraphs (b)(3), (b)(4), (c)(3), and (c)(4); and to add new paragraphs (b)(5) and (c)(5) to read as follows:

§ 383.93 Endorsements.

* * * * *

(b) * * *

(3) Tank vehicles;

(4) Required to be placarded for hazardous materials; or

(5) School buses.

(c) * * *

(3) *Tank vehicle*—a knowledge test;

(4) *Hazardous Materials*—a knowledge test; and

(5) *School bus*—a knowledge and a skills test.

15. Add § 383.123 to subpart G to read as follows:

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for a school bus endorsement must satisfy the following three requirements:

(1) Qualify for passenger vehicle endorsement. Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) Knowledge test. Must have knowledge covering at least the following three topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing highway rail grade crossings.

(3) Skills test. Must take a driving skills test in a school bus of the same vehicle group (see § 383.91(a)) as the school bus applicant will drive.

(b) *Substitute for driving skills test.* (1) At the discretion of a State, the driving skills test required in paragraph (a)(3) of this section may be waived for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the conditions set forth in paragraph (b)(2) of this section.

(2) An applicant must certify and the State must verify that, during the two-year period immediately prior to applying for the school bus endorsement, the applicant:

(i) Held a valid CDL with a passenger vehicle endorsement to operate a school bus representative of the group he or she will be driving;

(ii) Has not had his or her driver's license or CDL suspended, revoked or canceled or been disqualified from operating a CMV;

(iii) Has not been convicted of any of the disqualifying offenses in § 383.51(b) while operating a CMV or of any offense in a non-CMV that would be disqualifying under § 383.51(b) if committed in a CMV;

(iv) Has not had more than one conviction of any of the serious traffic violations defined in § 383.5, while operating any type motor vehicle;

(v) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident;

(vi) Has not been convicted of any motor vehicle traffic violation that resulted in an accident; and

(vii) Has been regularly employed as a school bus driver, has operated a school bus representative of the group the applicant seeks to drive, and provides evidence of such employment.

(3) After September 30, 2005 the provisions in paragraph (b) of this section do not apply.

16. Amend § 383.153 to revise paragraph (a)(9)(v), redesignate paragraph (a)(9)(vi) as paragraph (a)(9)(vii) and add new paragraph (a)(9)(vi) to read as follows:

§ 383.153 Information on the document and application.

(a) * * *

(9) * * *

(v) X for a combination of tank vehicle and hazardous materials endorsements;

(vi) S for school bus; and

(vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

17. Revise the authority citation for part 384 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

18. Add § 384.107 to subpart A to read as follows:

§ 384.107 Matter incorporated by reference.

(a) *Incorporation by reference.* This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The materials are hereby made a part of the regulations in this part. The Director of the Office of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Materials incorporated.* The AAMVAnet, Inc.'s ''Commercial Driver License Information System (CDLIS) State Procedures,'' Version 2.0, October 1998, IBR approved for §384.231(d).

(c) *Addresses.* (1) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW, Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7.

(ii) The Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(2) Information and copies of all of the materials incorporated by reference may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd, Suite 400, Arlington, VA 22203.

19. Revise § 384.203 to read as follows:

§ 384.203 Driving while under the influence.

(a) The State must have in effect and enforce through licensing sanctions the disqualifications prescribed in § 383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration.

(b) Nothing in this section shall be construed to require a State to apply its criminal or other sanctions for driving under the influence to a person found to have operated a CMV with an alcohol concentration of 0.04, except licensing sanctions including suspension, revocation, or cancellation.

(c) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in § 383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration and gives full faith and credit to the disqualification of CMV drivers by other States shall be deemed in substantial compliance with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)(3)).

20. Amend § 384.206 to revise paragraph (a)(2) to read as follows:

§ 384.206 State record checks.

(a) * * *

(2) *Other States' records.* Before the initial or transfer issuance of a CDL to a person, and before renewing a CDL held by any person, the issuing State must:

(i) Require the applicant to provide the names of all States where the applicant has previously been licensed to operate any type of motor vehicle.

(ii) Within the time period specified in § 384.232, request the complete driving record from all States where the applicant was licensed within the previous 10 years to operate any type of motor vehicle.

(iii) States receiving a request for the driving record of a person currently or previously licensed by the State must provide the information within 30 days.

* * * * *

21. Add § 384.208 to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CDL holder licensed by another State, or revoking, suspending, or canceling an out-of-State CDL holder's privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record.

22. Revise § 384.209 to read as follows:

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CDL holders.* Whenever a person who holds a CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than a parking violation), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(b) *Required notification with respect to non-CDL holders.* Whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(c) *Time period for notification of traffic violations.* (1) Beginning on September 30, 2005, the notification must be made within 30 days of the conviction.

(2) Beginning on September 30, 2008, the notification must be made within 10 days of the conviction.

23. Revise § 384.210 to read as follows:

§ 384.210 Limitation on licensing.

A State must not knowingly issue a CDL or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which:

(a) A person is disqualified from operating a CMV, as disqualification is defined by § 383.5 of this subchapter, or under the provisions of § 383.73(g) or § 384.231(b)(2) of this subchapter;

(b) The CDL holder's noncommercial driving privilege has been revoked, suspended, or canceled; or

(c) Any type of driver's license held by such person is suspended, revoked, or canceled by the State where the driver is licensed for any State or local law related to motor vehicle traffic control (other than parking violations).

24. Revise § 384.213 to read as follows:

§ 384.213 State penalties for drivers of CMVs.

The State must impose on drivers of CMVs appropriate civil and criminal penalties that are consistent with the penalties prescribed under part 383, subpart D, of this subchapter.

25. Revise § 384.215(a) to read as follows:

§ 384.215 First offenses.

(a) *General rule.* The State must disqualify from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a disqualifying offense specified in items (1) through (8) of Table 1 to § 383.51 of this subchapter, for no less than one year.

* * * * *

26. Revise § 384.216 to read as follows:

§ 384.216 Second offenses.

(a) *General rule.* The State must disqualify for life from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a subsequent offense as described in Table 1 to § 383.51 of this subchapter.

(b) *Special rule for certain lifetime disqualifications.* A driver disqualified for life under Table 1 to § 383.51 may be reinstated after 10 years by the driver's State of residence if the requirements of § 383.51(a)(5) have been met.

27. Revise § 384.217 to read as follows:

§ 384.217 Drug offenses.

The State must disqualify from operating a CMV for life each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction of a first offense, of using a CMV in the commission of a felony described in item (9) of Table 1 to § 383.51 of this subchapter. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in item (9) of Table 1 to § 383.51 of this subchapter.

28. Revise § 384.218 to read as follows:

§ 384.218 Second serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 60 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this subchapter, in any State(s) or jurisdiction(s), of two serious traffic violations as specified in Table 2 to § 383.51.

29. Revise § 384.219 to read as follows:

§ 384.219 Third serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 120 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this subchapter, in any State(s) or jurisdiction(s), of three serious traffic violations as specified in Table 2 to § 383.51. This disqualification period must be in addition to any other previous period of disqualification.

30. Add § 384.222 to read as follows:

§ 384.222 Violation of out-of-service orders.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of §§ 383.37(c), Table 4 to 383.51, and 383.53(b) of this subchapter.

31. Revise § 384.223 to read as follows:

§ 384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of §§ 383.37(d), Table 3 to 383.51, and 383.53(c) of this subchapter.

32. Add § 384.224 to read as follows:

§ 384.224 Noncommercial motor vehicle violations.

The State must have and enforce laws and/or regulations applicable to drivers of non-CMVs, as defined in § 383.5 of this subchapter, which meet the minimum requirements of Tables 1 and 2 to § 383.51 of this subchapter.

33. Add § 384.225 to read as follows:

§ 384.225 Record of violations.

The State must:

(a) *CDL holders.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(b) *A person required to have a CDL.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed while the driver was operating a CMV.

(c) Make driver history information required by this section available to the users designated in paragraph (e) of this section, or to their authorized agent, within 10 days of:

(1) Receiving the conviction or disqualification information from another State; or

(2) The date of the conviction, if it occurred in the same State.

(d) Retain on the driver history record all convictions, disqualifications and other licensing actions for violations for at least 3 years or longer as required under § 384.231(d).

(e) Only the following users or their authorized agents may receive the designated information:

(1) *States*—All information on all driver records.

(2) *Secretary of Transportation*—All information on all driver records.

(3) *Driver*—Only information related to that driver's record.

(4) *Motor Carrier or Prospective Motor Carrier*—After notification to a driver, all information related to that driver's, or prospective driver's, record.

34. Add § 384.226 to read as follows:

§ 384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

35. Revise § 384.231 to read as follows:

§ 384.231 Satisfaction of State disqualification requirement.

(a) *Applicability.* The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221 through 384.224, and 384.231 of this part apply to the State of licensure of the person affected by the provision. The provisions of § 384.210 of this part also apply to any State to which a person makes application for a transfer CDL.

(b) *Required action.* (1) *CDL holders.* A State must satisfy the requirement of this part that the State disqualify a person who holds a CDL by, at a minimum, suspending, revoking, or canceling the person's CDL for the applicable period of disqualification.

(2) *A person required to have a CDL.* A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CDL who is convicted of an offense or offenses necessitating disqualification under § 383.51 of this subchapter. At a minimum, the State must implement the

limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such a person from legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

(c) *Required timing.* The State must disqualify a driver as expeditiously as possible.

(d) Recordkeeping requirements. The State must conform to the requirements of the October 1998 edition of the AAMVAnet, Inc.'s ''Commercial Driver License Information System (CDLIS) State Procedures,'' Version 2.0. (Incorporated by reference, see § 384.107.) These requirements include the maintenance of such driver records and driver identification data on the CDLIS as the FMCSA finds are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219, and 384.221 through 384.224 of this part.

36. Revise § 384.301 to read as follows:

§ 384.301 Substantial compliance-general requirements

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

(b) A State shall come into substantial compliance with the requirements of subpart B of this part in effect as of September 30, 2002 as soon as practical, but, unless otherwise specifically provided in this part, not later than three years after September 30, 2002.

37. Revise § 384.307 to read as follows:

§ 384.307 FMCSA program reviews of State compliance.

(a) FMCSA Program Reviews. Each State's CDL program will be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State must cooperate with the review and provide any information requested by the FMCSA.

(b) *Preliminary FMCSA determination and State response.* If, after review, a preliminary determination is made either that the State has not submitted the required annual self-certification or that the State does not meet one or more of the minimum standards for substantial compliance under subpart B of this part, the State will be informed accordingly.

(c) *Reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented or intends to implement to correct the deficiencies cited in the notice or, alternatively, why the FMCSA preliminary determination is incorrect. The State must provide documentation of corrective action as required by the agency. Corrective action must be adequate to correct the deficiencies noted in the program review and be implemented on a schedule mutually agreed upon by the agency and the State. Upon request by the State, an informal conference will be provided during this time.

(d) *Final FMCSA determination.* If, after reviewing a timely response by the State to the preliminary determination, a final determination is made that the State is not in compliance with the affected standard, the State will be notified of the final determination. In making its final determination, the FMCSA will take into consideration the corrective action either implemented or planned to be implemented in accordance with the mutually agreed upon schedule.

(e) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

38. Revise § 384.401 to read as follows:

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following the first year of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to five percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1754) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State was not in substantial compliance with subpart B of this part.

(b) *Following second and subsequent year(s) of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to ten percent of the Federal-aid funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1753) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State had not returned to substantial compliance with subpart B of this part.

39. Revise § 384.403 to read as follows.

§ 384.403 Availability of funds withheld for noncompliance.

(a) Federal-aid highway funds withheld from a State under § 384.401(a)(1) or (b)(1) shall not thereafter be available for apportionment to the State.

(b) MCSAP funds withheld from a State under § 384.401(a)(2) or (b)(2) remain available until June 30 of the fiscal year in which they were withheld. If before June 30 the State submits a document signed by the Governor or his or her delegate certifying, and the FMCSA determines, that the State is now in substantial compliance with the standards of subpart B of this part, the withheld funds shall be restored to the State. After June 30, unrestored funds shall lapse and be allocated in accordance with § 350.313 of this subchapter to all States currently in substantial compliance with subpart B of this part.

40. Add § 384.405 to read as follows:

§ 384.405 Decertification of State CDL program.

(a) *Prohibition on CDL licensing activities.* The Administrator may prohibit a State found to be in substantial noncompliance from performing any of the following four licensing transactions:

(1) Issuance of initial CDLs.

(2) Renewal of CDLs.

(3) Transfer of out-of-State CDLs to the State.

(4) Upgrade of CDLs.

(b) *Conditions considered in making decertification determination.* The Administrator will consider, but is not limited to, the following five conditions in determining whether the CDL program of a State in substantial noncompliance should be decertified:

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or National Driver Register (NDR) as required by § 383.73 of this subchapter when processing CDL applicants, drivers transferring a CDL issued by another State, CDL renewals and/or upgrades.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out of State drivers to the State where the driver is licensed.

(4) The State does not properly administer knowledge and/or skills tests to CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed upon time frame.

(c) *Standard for considering deficiencies.* The deficiencies described in paragraph (b) of this section must affect a substantial number of either CDL applicants or drivers.

(d) *Decertification: preliminary determination.* If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in § 384.405(b), among other things, the FMCSA will inform the State that it has made a preliminary determination of noncompliance and that the State's CDL program may therefore be decertified. Any response from the State, including factual or legal arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) *Decertification: final determination.* If, after considering all material submitted by the State in response to the FMCSA preliminary determination, the Administrator decides that substantial noncompliance exists which warrants decertification of the CDL program, he or she will issue a decertification order prohibiting the State from issuing CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) *Recertification of a State.* The Governor of the decertified State or his or her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CDLs in the State.

(g) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

(h) *Validity of previously issued CDLs.* A CDL issued by a State prior to the date the State is prohibited from issuing CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

41. Add § 384.407 to read as follows:

§ 384.407 Emergency CDL grants.

The FMCSA may provide grants of up to $1,000,000 per State from funds made available under 49 U.S.C. 31107(a), to assist States whose CDL programs may fail to meet the compliance requirements of subpart B of this part, but which are determined by the FMCSA to be making a good faith effort to comply with these requirements.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

42. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

43. Amend § 390.5 to revise the definition for ''Driving a commercial motor vehicle while under the influence of alcohol'' to read as follows:

§ 390.5 Definitions.

* * * * *

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to § 383.51 or § 392.5(a)(2) of this subchapter.

* * * * *

Issued on: June 30, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–18457 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–EX–P

Federal Register

Wednesday,
July 31, 2002

Part III

Department of Housing and Urban Development

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4768–N–01]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants; Fiscal Year 2002

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the availability of approximately $492.5 million in FY 2002 funds for the HOPE VI Revitalization Program.

I. Program Overview

(A) Purpose of the Program

In accordance with section 24(a) of the United States Housing Act of 1937 (1937 Act), the purpose of HOPE VI Revitalization grants is to assist public housing agencies (PHAs) to:

(1) Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

(2) Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;

(3) Provide housing that will avoid or decrease the concentration of very low-income families; and

(4) Build sustainable communities.

(B) Available Funds

Approximately $492.5 million, in accordance with Section II below.

(C) Eligible Applicants

Public Housing Authorities that have severely distressed housing in their inventory and are otherwise in conformance with the threshold requirements provided in Section III of this NOFA. PHAs that only administer Section 8 and Tribal PHAs are not eligible to apply.

(D) Application Deadline

Revitalization grant applications are due on November 29, 2002, as described in Section IV(B) of this NOFA.

(E) Authority

(1) The funding authority for HOPE VI Revitalization grants under this HOPE VI NOFA is provided by the Fiscal Year 2002 Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002 (Pub.L. 107–73, approved on November 26, 2001) (FY 2002 HUD Appropriations Act) under the heading ''Revitalization of Severely Distressed Public Housing (HOPE VI).''

(2) The program authority for the HOPE VI Program is section 24 of the 1937 Act (42 U.S.C. 1437v), as added by section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998).

II. Allocation of HOPE VI Funds

Type of assistance	Allocation of funds (Approximate)	Funds Available for award in this HOPE VI revitalization NOFA (Approximate)
Revitalization Grants	492,485,000	492,485,000
Demolition Grants	40,000,000	
Neighborhood Networks	5,000,000	
TechnicalAssistance	6,250,000	
Section 8 Assistance	30,000,000	
TOTAL	$573,735,000	$492,485,000

(A) Revitalization Grants. Approximately $492.5 million of the FY 2002 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with this HOPE VI Revitalization grant NOFA.

(B) Demolition Grants. Approximately $40 million of the FY 2002 HOPE VI appropriation has been allocated to fund HOPE VI Demolition grants and will be awarded in accordance with a separate HOPE VI Demolition grant NOFA.

(C) Neighborhood Networks. The FY 2002 appropriation for HOPE VI allocated $5 million for a Neighborhood Networks initiative for activities authorized in Section 24(d)(1)(G) of the Act, which provides for the establishment and operation of computer centers in public housing for the purpose of enhancing the self-sufficiency, employability, and economic self-reliance of public housing residents by providing them with onsite computer access and training resources. The availability of these funds will be announced in a separate NOFA, and, in accordance with the appropriation, they will be awarded to PHAs on a competitive basis. In addition, PHAs that receive grant funds under this NOFA are required to establish Neighborhood Networks and may use funds awarded under this NOFA for this purpose.

(D) Technical Assistance. The FY 2002 appropriation for HOPE VI allocated $6.25 million to provide technical assistance and contract expertise in the HOPE VI program, to be provided directly or indirectly by grants, contracts, or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of HUD and of PHAs, and to residents. Technical assistance funds will be administered by the Office of Public Housing Investments.

(E) Section 8. The cost of Section 8 tenant-based assistance that will be provided to FY 2002 HOPE VI Revitalization and Demolition grantees will come from the FY 2002 HOPE VI appropriation. Approximately $30 million will be allocated for such assistance. If this amount is more than the amount necessary, the remaining funds will be used for eligible activities under Section 24 of the Act, and made available for obligation before September 30, 2003.

(1) If you anticipate that you will need Section 8 assistance in order to carry out necessary relocation in conjunction with proposed revitalization during FY 2003, your application must include the number of vouchers you will need, both in total and in FY 2003, and a Section 8 application.

(2) If you will need Section 8 assistance in fiscal years beyond FY 2003 for revitalization or demolition that is being carried out in phases, or if

you have unused Section 8 vouchers that are available to be used for HOPE VI-related relocation in FY 2003 but will need more for subsequent years, you must request additional vouchers only as needed during the appropriate fiscal years.

(3) Section 8 assistance cannot be awarded or used to relocate residents from units that are to be demolished until those units have been approved by HUD for demolition.

(4) If you have previously received Section 8 assistance to relocate residents from the targeted severely distressed units, you may still apply for a HOPE VI Revitalization grant to physically replace those same units, or a HOPE VI Demolition Grant to demolish the units without replacement.

(5) You may request Section 8 assistance for the relocation of families who intend to move back to the site upon completion of the demolition and revitalization of the severely distressed project. Such families are not required to move back to the site if they prefer to keep the Section 8 assistance after revitalization activities are completed.

(6) You may request Section 8 assistance for all units covered under a HOPE VI Revitalization or Demolition application to relocate residents from units that will not be replaced with hard units.

(7) Section 8 vouchers are available as replacement units for all units that will be demolished, sold, or otherwise disposed of at the severely distressed project(s), minus the number of HOPE VI-eligible replacement units otherwise to be provided under Section 24(d)(1)(J) in connection with said project.

(8) In accordance with Section VI(D)(8) of this NOFA, to the extent that you need Section 8 vouchers for relocation purposes in connection with HOPE VI grant funds under this NOFA, in an amount that exceeds the number of units to be demolished, sold, or otherwise disposed of at the severely distressed project, you should apply for Section 8 vouchers in accordance with the separate funding notices to be issued by HUD. If the Department receives more requests for Section 8 vouchers than can be funded from FY 2002 funds, some applications may receive priority funding in 2003.

(9) You must have a 97 percent lease-up rate or budget authority utilization rate for your current voucher program in order not to have your requested number of relocation/replacement vouchers reduced by HUD.

(10) For more information regarding the Section 8 Program, see Notice PIH 2001–20 (HA), which is available through HUDCLIPS at *www.hudclips.org.*

(F) Notwithstanding Section III(E)(4) of the General Section of the FY 2001 SuperNOFA regarding funding of unsuccessful applicants, HUD will not use any funds from this HOPE VI NOFA to fund any nonselected HOPE VI Revitalization applications submitted in previous years. Only applications submitted under this FY 2002 HOPE VI NOFA will be considered for funding.

III. Summary of Threshold Requirements

(A) The following are threshold requirements that must be met in order for a HOPE VI Revitalization application to be considered for funding. If the application fails to meet any one of these thresholds, HUD will not rate or rank the application, in accordance with Section XVII(B)(5) of this NOFA.

(B) Unless specifically stated that an item is curable, the threshold items in this Section III(B) are not subject to Section XVII(B)(3) of this NOFA regarding the correction of deficiencies.

(1) The applicant must qualify as an eligible applicant, as defined in Section VII(A)(1) of this NOFA.

(2) The application must be received by HUD by the deadline date and time, in accordance with Section IV(B) of this NOFA.

(3) Standard certifications must be submitted in accordance with Section XVI(A)(4) of this NOFA. Deficiencies for this item are curable, in accordance with Section XVII(B)(3) of this NOFA.

(4) The application must disclose all prior HUD public housing assistance for physical revitalization at the targeted project, in accordance with Section VI(B)(2) of this NOFA. This item is curable.

(5) The application must include a certification by a third party professional that the proposed costs meet the requirements of Section VI(C) of this NOFA. This item is curable.

(6) In accordance with Section VI(D)(1) of this NOFA, each applicant may submit only one HOPE VI Revitalization application.

(7) If an application proposes to revitalize more than one severely distressed public housing project, those projects must meet the requirements of Section VI(D)(3) of this NOFA.

(8) If an application proposes to revitalize a severely distressed scattered site project, the project must meet the requirements of Section VI(D)(4) of this NOFA.

(9) An application may not request HOPE VI Revitalization grant funds to revitalize units that were funded by an existing HOPE VI Revitalization grant, in accordance with Section VI(D)(6) of this NOFA.

(10) If an application proposes to use HOPE VI Revitalization funds to develop market rate units or affordable units which do not qualify as replacement units in accordance with Section VI(D)(7) of this NOFA, the entire application will be disqualified.

(11) If applicable the application must meet the requirements of separability, as described in Section VI(D)(11) of this NOFA.

(12) If an applicant has been designated as troubled, it must meet the requirements of Section VII(A)(1) of this NOFA.

(13) An applicant must have obligated at least 90 percent of its FY 1998–1999 Capital Funds in accordance with Section VII(A)(2) of this NOFA.

(14) An applicant which has one or more existing HOPE VI Revitalization grants will be disqualified if it has an open Inspector General (IG) or the General Accounting Office (GAO) audit finding related to the HOPE VI or Capital Fund Programs as of the application due date, in accordance with Section VII(A)(3)(a) of this NOFA.

(15) An applicant which has one or more existing HOPE VI Revitalization grants will be disqualified if one or more of those grants fails to meet the performance requirements described in Section VII(A)(3)(b) of this NOFA.

(16) An applicant must provide a certification that it has either procured a developer by the application deadline date or that it will act as its own developer, in accordance with Section VII(A)(5) of this NOFA.

(17) An application must include an Administrative and Compliance Checkpoints Report, as provided in the HOPE VI Revitalization Application Kit, that, at a minimum, reflects the timeliness of construction requirements of Section XIX(B) of this NOFA.

(18) An application must include a signed certification that the applicant or its procured property manager will implement the operation and management principles and policies in accordance with Section VII(A)(6) of this NOFA. This item is curable.

(19) An application must include a certification signed by an engineer or architect that the targeted public housing project meets the definition of severe physical distress in accordance with Section VIII(A)(1)(a) of this NOFA. This item is curable.

(20) An application must include commitments of resources in an amount that meets the match requirements of Section IX(A) of this NOFA.

(21) An application must include a certification by the applicant that a

resident training session and public meetings were held in accordance with Section X(A) of this NOFA. This item is curable.

(22) An application must include a certification that the applicant has completed a HOPE VI Revitalization Relocation Plan and that the Relocation Plan is in compliance with the Uniform Relocation Act, as described in Section XII(C) of this NOFA.

(23) An applicant must be in compliance with Fair Housing and Civil Rights Laws, in accordance with Section XIII(C)(1) of this NOFA.

(24) An applicant must be in compliance with any desegregation or other court order related to Fair Housing, in accordance with Section XIII(C)(2) of this NOFA.

(25) If an application includes a proposal to develop off-site replacement housing, the application must include evidence of site control of the proposed off-site locations, in accordance with Section XIV(B)(4) of this NOFA.

(26) If an application includes a proposal to develop market rate housing, it must include a preliminary market assessment letter, in accordance with Section XIV(C) of this NOFA. This item is curable.

(27) An application must include a certification that all necessary zoning approvals have been secured or scheduled, in accordance with Section XIV(E) of this NOFA.

(28) An application must include a demonstration of the appropriateness of the proposal, in accordance with Section XV(A) of this NOFA.

IV. Application Submission Information

(A) Application Kit

(1) The HOPE VI Application Kit provides explicit, specific instructions as to the format of your HOPE VI Revitalization application. Your application must conform to the requirements of this NOFA and follow the format described in the Kit. The Application Kit is designed to guide you through the application process and ensure that your application addresses all of the requirements of this NOFA. Please note that if there is a discrepancy between information provided in the Application Kit and the information provided in the NOFA, the information in the NOFA prevails.

(2) HUD will mail an Application Kit to every eligible PHA. In addition, you may obtain an Application Kit from the HOPE VI Information Clearinghouse at 1–866–242-HOPE (1–866–242-HOPE is a toll free number). Persons with hearing- or speech-impairments may call the Clearinghouse's TTY number at 1–800-HUD–2209. When requesting an Application Kit, please refer to HOPE VI Revitalization and provide your name, address (including zip code), and telephone number (including area code). The Application Kit also will be available on the HOPE VI Home Page at *www.hud.gov/hopevi* and the HUD Home Page at *www.hud.gov/grants.*

(B) Application Due Date

Revitalization grant applications are due at HUD Headquarters on or before 5:15 pm, Eastern Time, on November 29, 2002. This application deadline is firm. In contrast to previous years, your application must ARRIVE at HUD by 5:15 pm ON the due date. If you mail or give your application to an overnight carrier on the due date and it does not arrive by 5:15 pm ON THE DUE DATE, your application will not be considered. Submit your application early to avoid missing the deadline and being disqualified by unanticipated delays or other related problems.

(C) Application Delivery

(1) Send the original and one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410. Please make sure that you note the room number. The correct room number is very important to ensure that your application is not misdirected.

(2) Applications Sent by Overnight Delivery. It is strongly recommended that you send your application by an overnight carrier, at least two days before the application due date. You may use only DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or the U.S. Postal Service (USPS), as they are the only carriers accepted into the HUD building without an escort. Delivery by these services must be made during HUD's Headquarters business hours, between 8:45 AM and 5:15 PM, Eastern Time, Monday to Friday. If your area is not served by these companies, you must submit your application via USPS.

(3) Hand Carried Applications. Due to new security measures, HUD will no longer accept hand carried applications.

(4) You must send one copy of your application to your HUD Field Office. The application sent to Headquarters will be the one that must meet the deadline. If an application is received by the Field Office on time, but not by Headquarters, it will not be considered.

(5) HUD will not accept for review and evaluation any applications sent by facsimile (fax). Also do not submit resumes or videos.

(D) Technical Assistance

(1) Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. HUD staff, however, are not permitted to assist in preparing your application. If you have a question or need a clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll free numbers). Persons with hearing-or speech-impairments may call via TTY by calling the Federal Information Relay Service at (800) 877–8339.

(2) Frequently asked questions, clarifications, and any technical corrections will be posted to the HUD Home Page at *www.hud.gov.* In addition, all materials related to this NOFA, including the HOPE VI Revitalization Application Kit, will be posted to the HOPE VI website at *www.hud.gov/hopevi.* Any technical corrections will also be published in the **Federal Register**. Applicants are responsible for monitoring these sites during the application preparation period.

V. Eligible Revitalization Activities

HOPE VI Revitalization grants may be used for activities to carry out revitalization programs for severely distressed public housing in accordance with Section 24(d) of the U.S. Housing Act of 1937 Act (1937 Act). Revitalization activities approved by HUD must be conducted in accordance with the requirements of this NOFA.

(A) Relocation, including reasonable moving expenses, for residents displaced as a result of the revitalization of the project. See Section XII(C) of this NOFA for relocation requirements.

(B) Demolition of dwelling units and nondwelling facilities, in whole or in part.

(1) Demolition is not a required element of a HOPE VI Revitalization Plan.

(2) You may not carry out, nor permit others to carry out the demolition of the Project or any portion of the Project until HUD approves, in writing, one of the following:

(a) Information in your HOPE VI Revitalization Application, along with Supplemental Submissions requested by HUD after the award of the grant and a Request for Release of Funds submitted in accordance with 24 CFR part 58. Section 24(g) of the 1937 Act provides that severely distressed public housing demolished pursuant to a Revitalization Plan is not required to be approved by a demolition application under Section 18 of the 1937 Act or regulations at 24 CFR part 970. If you do not receive a HOPE VI Revitalization grant, the information in your application will not be used to process a request for demolition;

(b) A demolition application under Section 18 of the 1937 Act. While a Section 18 approval is not required by HOPE VI demolition, you will not have to wait for demolition approval through your Supplemental Submissions, as described in Section (a) above; or

(c) A Section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 Pub. L. 104–134, approved on April 26 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

(C) Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, in accordance with Section 18 of the 1937 Act and implementing regulations at 24 CFR part 970. A lease of one year or more that is not incident to the normal operation of a Project is considered to be a disposition that is subject to Section 18 of the 1937 Act.

(D) Rehabilitation and physical improvement of public housing and/or community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Project and residents of off-site replacement housing, in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o) and 24 CFR 968.130 and 968.135(b) and (d) or successor regulations, as applicable.

(E) Development

(1) For any standard (non-mixed finance) public housing development activity, (whether on-site reconstruction or off-site development), you must obtain HUD approval of a standard development proposal submitted under 24 CFR part 941 (or successor part).

(2) For mixed-finance housing development, you must obtain HUD approval of a Mixed Finance Proposal, submitted under 24 CFR part 941, subpart F (or successor part and subpart).

(3) For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the Project and residents of off-site replacement housing, you must comply with 24 CFR part 941 (or successor part). Information required for this activity must be included in either a Standard or Mixed Finance Development Proposal, as applicable.

(F) Homeownership Activities

(1) For homeownership replacement units developed under a Revitalization Plan, you must obtain HUD approval of a homeownership proposal. The homeownership proposal must be consistent with the 80 percent of Area Median Income (AMI) limitations and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can be found at *www.huduser.org/datasets/il/fmr01/index.html).* See Section XIV(D) of this NOFA (mixed-income communities) for more information about homeownership housing. Your homeownership proposal must conform to either:

(a) Section 24(a)(1)(J) of the 1937Act; or

(b) Section 32 of the 1937 Act, provided that HUD has issued final implementing regulations by the application due date; or

(c) 24 CFR part 906 if HUD has not issued final regulations to implement Section 32 of the 1937 Act by the application due date.

(2) Assistance may include:

(a) Downpayment or closing cost assistance;

(b) Provision of second mortgages; and/or

(c) Construction or permanent financing for new construction, acquisition, or rehabilitation costs related to homeownership replacement units.

(G) Acquisition

(1) Rental Units. For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must submit a Development Proposal in accordance with CFR part 941.304 (conventional development) or 24 CFR 941.606 (mixed finance development).

(2) Land for Off-Site Replacement Units. For acquisition of land for public housing or homeownership development, you must comply with 24 CFR part 941 or successor part.

(3) Land for Economic Development-Related Activities.

(a) You may use HOPE VI grant funds to acquire land for economic development-related activities if those activities specifically promote the economic self-sufficiency of residents.

(b) With HUD approval, you may also use HOPE VI grant funds for limited infrastructure and site improvements associated with developing retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site.

(c) You may not use HOPE VI grant funds to pay hard construction costs or to buy equipment for retail, commercial, or non-public housing office facilities.

(4) Acquisition Proposal. Before you may undertake acquisition activities with HOPE VI or other public housing funds, you must submit an acquisition proposal to HUD that meets the requirements of 24 CFR 941.303.

(H) Necessary management improvements, including transitional security activities.

(I) Reasonable costs for administration, planning, technical assistance, and fees and costs, as established by HUD guidance and policies regarding cost controls. These costs are limited to the costs of implementing the Revitalization Plan, as specifically approved by HUD, such as fees for architectural and engineering work, program management (if any), and reasonable legal fees. See Section VII(C)(3) for soft development costs guidelines.

(J) Community and Supportive Services (CSS). The CSS Component of the HOPE VI Program encompasses all activities that are designed to promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved. The CSS Component is described in Section XI of this NOFA.

(K) Leveraging other resources, including additional housing resources, supportive services, job creation, and other economic development uses on or near the project that will benefit future residents of the site.

VI. Revitalization Grant Limitations

(A) Grant Amount Limitations

(1) The total amount you may request in your Revitalization application is limited to $20 million or the sum of the amounts in Section IV(A)(2), whichever is lower.

(2) Total Development Cost (TDC). The ''TDC Limit'' refers to the maximum amount of HUD funding that HUD will approve for development of specific public housing units in a given location. The TDC limit applies only to the costs of development of public housing that are paid directly with HUD public housing funds, a PHA may exceed the TDC limit using non-public housing

funds such as CDBG, HOME, low-income housing tax credit equity, etc. The HUD TDC Cost Tables are issued for each calendar year for the building type and bedroom distribution for the public housing replacement units. Use the TDCs in effect at the time this HOPE VI NOFA is published when making your TDC calculations.

(a) The total cost of development, including relocation costs, is limited to the sum of:

(i) HUD's TDCs up to 100 percent of HUD's published TDC limits for the costs of demolition and new construction, multiplied by the number of HOPE VI public housing replacement units; and/or

(ii) 90 percent of the TDC limits, multiplied by the number of public housing units after substantial rehabilitation and reconfiguration.

(b) The TDC limit for a project is made up of the following components:

(i) Housing Cost Cap (HCC): HUD's published limit on the use of public housing funds for the cost of constructing the public housing units, which includes unit hard costs, builder's overhead and profit, utilities from the street, finish landscaping, and a hard cost contingency. Estimates should take into consideration the Davis-Bacon wage rate requirements as described in Section XIX(F)(1)(a) of this NOFA.

(ii) Community Renewal (CR): The balance of funds remaining within the project's TDC limit after the housing construction costs described in (i) above are subtracted from the TDC limit. This is the amount of public housing funds available to pay for PHA administration, planning, infrastructure and other site improvements, community and economic development facilities, acquisition, relocation, demolition, and remediation of units to be replaced on site, and all other development costs.

(3) CSS. You may request an amount up to 15 percent of the total HOPE VI grant to pay the costs of CSS activities, as described in Section XI(B) of this NOFA. These costs are in addition to (i.e., excluded from) the TDC calculation in Section (2) above.

(4) Demolition and Site Remediation Costs of Unreplaced On-site Units. You may request an amount necessary for demolition and site remediation costs of units that will not be replaced on-site. This cost is in addition to (i.e., excluded from) the TDC calculation in Section (2) above.

(5) Extraordinary Site Costs.

(a) You may request a reasonable amount to pay extraordinary site costs, which are construction costs related to unusual pre-existing site conditions that are incurred, or anticipated to be incurred. If such costs are significantly greater than those typically required for similar construction, are verified by an independent, certified engineer or architect, and are approved by HUD, they may be excluded from the TDC calculation Section (2) above. Extraordinary site costs may be incurred in the remediation and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: Abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and/or soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, etc.; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint from structures are normal demolition costs. Extraordinary measures to remove lead-based paint that has leached into the soil would constitute an extraordinary site cost.

(b) Extraordinary site costs must be justified and verified by a licensed engineer or architect who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and state of registration. An Extraordinary Site Costs Certification is included in the HOPE VI Application Kit. If this certification is not included in the application after the cure period described in Section XVII(B)(3) of this NOFA, extraordinary site costs will not be allowed.

(B) Other Application Limitations

(1) You may not use HOPE VI Revitalization Grant funds to pay for any revitalization activities carried out on or before the date of the letter announcing the award of the HOPE VI Grant.

(2) *Threshold:* Your application must disclose all prior HUD public housing assistance received for the project(s) you have targeted for the physical revitalization related to the proposed revitalization activities.

(C) Hard and Soft Development Costs Guidelines.

(1) Your projected hard development costs must be realistic, developed through the use of technically competent methodologies, including cost estimating services, and comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

(2) Your cost estimates must represent an economically viable preliminary plan for designing, planning and carrying out your proposed activities in accordance with local costs of labor, materials, and services.

(3) Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD's ''Safe Harbor'' cost control standards, which can be found at *http://www.hud.gov/offices/pih/programs/ph/hope6/grants/admin/safeharbor.pdf*. These safe harbors provide specific limitations on such costs as developer's fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor's fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD's Cost Control and Safe Harbor Standards can be found on the Grant Administration page of the HOPE VI website at *www.hud.gov/hopevi*.

(4) *Threshold:* Your cost estimates must be certified to meet the standards of Sections (1) through (3) above by an independent cost estimator, architect, engineer, contractor, or other qualified third party professional.

(5) If you are eligible for funding, HUD will delete any unallowable items from your budget and may reduce your grant accordingly, except as provided in Section VI(D)(7) of this NOFA.

(D) Site and Unit Requirements.

(1) *Threshold:* One application. Each applicant may submit only one HOPE VI Revitalization application as described in this NOFA. If more than one application is submitted by a single applicant, all applications will be disqualified.

(2) *Threshold:* One Project. Except as provided in Sections (VI)(D)(3) and (4) below, each application must target one severely distressed public housing project (i.e., with one project number).

(3) *Threshold:* Contiguous Projects. Each application may request funds for more than one project if those projects are immediately adjacent to one another or within a quarter-mile of each other. If you include more than one project in your application, you must provide a map that clearly indicates that the projects are within a quarter-mile of each other. If HUD determines that they are not, your application will be ineligible for funding.

(4) *Threshold:* Scattered Site Projects. Your application may request funds to revitalize a scattered site public housing project. The sites targeted in an application proposing to revitalize scattered sites (regardless of whether the scattered sites are under multiple project numbers) must fall within a one

square mile area, except that you may identify a larger site if you can show that all of the targeted scattered site units are located within the hard edges (e.g., major highways, railroad tracks, lakeshore, etc.) of a neighborhood. If you propose to revitalize a project that extends beyond a one square mile radius or is otherwise beyond the hard edges of a neighborhood, your application will be ineligible for funding.

(5) Number of Units. You may request funds for as few or as many units as you wish in your application. HUD will review requests to revitalize projects with small numbers of units on an equal basis with those with large numbers of units.

(6) *Threshold:* Previously-funded Sites. You may submit a Revitalization application that targets a project that is being revitalized or replaced under an existing HOPE VI Revitalization grant or source of HUD public housing funds. However, you may not apply for new HOPE VI Revitalization funds for units in that project that were funded by the existing HOPE VI Revitalization grant or other HUD funds, even if those funds are inadequate to pay the costs to revitalize or replace all of the targeted units. For example, if a project has 700 units and you were awarded a HOPE VI Revitalization grant or other HUD public housing funds to address 300 of those units, you may submit an FY 2002 HOPE VI Revitalization application to revitalize the remaining 400 units. You may not apply for supplemental funds to supplement work on the original 300 units. If you request funds to revitalize units or buildings that have been funded by an existing HOPE VI Grant or other HUD funds, your application will be ineligible for funding.

(7) *Threshold:* HOPE VI funds may not be used to develop market rate units or affordable housing units which do not qualify as public housing or homeownership replacement units.

(8) Replacement Units. Under this HOPE VI NOFA, a HOPE VI Replacement unit shall be deemed to be any combination of public housing rental units, eligible homeownership units under Section 24(d)(1)(J) of the 1937 Act, and Section 8 vouchers that does not exceed the number of units demolished and/or disposed of at the targeted severely distressed public housing project.

(9) Access to Services. For both on-site and any off-site units, your overall Revitalization Plan must result in increased access to municipal services, jobs, mentoring opportunities, transportation, and educational facilities; i.e., the physical plan and self-sufficiency strategy must be well integrated and strong linkages must be established with the appropriate Federal and state and local agencies, non-profits, and the private sector to achieve such access.

(10) Universal Design. HUD encourages you to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, or when communicating with community residents at public meetings or events. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them.

(11) *Threshold*. Separability. In accordance with Section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only a portion of a project for revitalization, you must:

(a) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization, and

(b) Demonstrate that the site plan and building designs of the revitalized portion will provide defensible space for the occupants of the revitalized building(s) and that the properties that remain will not have a negative influence on the revitalized buildings(s), either physically or socially. Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

VII. Capacity

(A) Thresholds

(1) Troubled Status. If HUD has designated your housing authority as troubled pursuant to Section 6(j)(2) of the 1937 Act, HUD's Troubled Agency Recovery Centers will use documents and information available to it to determine whether you qualify as an eligible applicant. In accordance with Section 24(j) of the 1937 Act, the term ''applicant'' means:

(a) Any PHA that is not designated as ''troubled'' pursuant to Section 6(j)(2) of the 1937 Act;

(b) Any PHA for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to Section 6(j)(3) of the 1937 Act; and

(c) Any PHA that is designated as ''troubled'' pursuant to Section 6(j)(2) of the 1937 Act and that:

(i) Is designated as troubled principally for reasons that will not affect its capacity to carry out a revitalization program;

(ii) Is making substantial progress toward eliminating the deficiencies of the agency that resulted in its troubled status; or

(iii) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

(2) Obligation of Capital Funds. In order to be considered for funding, you must have obligated Capital Fund amounts (including the Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP)) in a timely manner. HUD will not consider any application from an applicant that has obligated less than 90 percent of its FY 1998–1999 Capital Funds, as required by the Quality Housing and Work Responsibility Act of 1998, by September 30, 2001, unless an extension has been approved by the Deputy Secretary. HUD will use the LOCCS disbursement system to determine the obligation rate as of September 30, 2001. Some PHAs have executed Moving To Work (MTW) Agreements that exempt the PHA from the statutory Capital Fund obligation and expenditure deadlines. Accordingly, those PHAs will not be subject to this provision.

(3) Performance of Existing HOPE VI Grantees. If an applicant has one or more existing HOPE VI Revitalization grants, the Department will disqualify such an applicant if:

(a) The applicant has an open IG or GAO audit finding related to the HOPE VI or Capital Fund Programs as of the date the application is due to HUD, or

(b) The applicant has failed to meet its performance requirements as required in the applicable HOPE VI Revitalization Grant Agreement by the application due date.

(4) Conducting Business in Accordance With HUD Core Values and Ethical Standards. You must develop and maintain a written code of conduct (see Sections 84.42 and 85.36(b)(3)) that reflects HUD's Core Values. This code of conduct must prohibit real and apparent conflicts of interest that may arise among your employees, officers or

agents; prohibit the solicitation and acceptance of gifts or gratuities by employees, officers, and agents for their personal benefit in excess of minimal value, and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a grant agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct.

(5) Selection of Developer. In a departure from previous years, in order to be selected for funding, you must provide a certification that:

(a) You have procured a developer for your first phase of construction by the application due date, in accordance with 24 CFR 85.36 and 24 CFR 941.602(d) (as applicable). A developer is an entity contracted to develop (and possibly operate) a mixed finance development that includes public housing units, pursuant to 24 CFR part 941 subpart F, and contingent on a satisfactory environmental review under 24 CFR part 58 or part 50, under the terms of a HUD-approved proposal. A developer most often has an ownership interest in the entity that is established to own and operate the replacement units (e.g. as the General Partner of a Limited Partnership). If you change developers after you are selected for funding, HUD reserves the right to rescind the grant; or

(b) You will act as your own developer for the proposed project. If you change your plan and procure an outside developer after you are selected for funding, HUD reserves the right to rescind the grant.

(6) Operation and Management Principles and Policies.

(a) Authority. Any HOPE VI-funded activities at public housing projects are subject to statutory requirements applicable to public housing projects under the 1937 Act, other statutes, and the Annual Contributions Contract (ACC). Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed public housing projects. You may request, for the revitalized project, a waiver of HUD regulations, subject to statutory limitations and a finding of good cause under 24 CFR 5.110 if the waiver will permit you to undertake measures that enhance the long-term viability of a project revitalized under this program. HUD will assess each request to determine whether good cause is established to grant the waiver.

(b) Requirements. HOPE VI Revitalization Grantees will be required to develop Management Agreements that describe their operation and management principles and policies for their public housing units. In your application, you must provide a certification that you will ensure that you and/or your procured property manager have complied (to the extent required) with the provisions of 24 CFR 966.3 in planning for the implementation of the operation and management principles and policies described below.

(i) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(ii) Instituting a system of local preferences adopted in response to local housing needs and priorities, e.g., preferences for victims of domestic violence, residency preferences, disaster victims;

(iii) Encouraging self-sufficiency by including lease requirements that promote involvement in the resident association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(iv) Implementing site-based waiting lists for the redeveloped public housing and/or following project-based management principles;

(v) Instituting strict applicant screening requirements such as credit checks, references, home visits, and criminal records checks;

(vi) Strictly enforcing lease and eviction provisions;

(vii) Improving the safety and security of residents through the implementation of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, etc;

(viii) Enhancing on-going efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with Federal, state, and local crime prevention programs and entities such as:

(*A*) Local law enforcement agencies;

(*B*) Your local United States Attorney;

(*C*) The Weed and Seed Program, if the targeted project is located in a designated Weed and Seed area. Operation Weed and Seed is a multi-agency strategy that ‘‘weeds out’’ violent crime, gang activity, drug use, and drug trafficking in targeted neighborhoods and then ‘‘seeds’’ the target area by restoring these neighborhoods through social and economic revitalization. Law enforcement activities constitute the ‘‘weed’’ portion of the program. Revitalization, which includes prevention, intervention, and treatment services as well as neighborhood restoration, constitutes the ‘‘seed’’ element. HUD has provided the Department of Justice with $10 million to fund Weed and Seed Strategies that fight crime and drugs in public, Indian, and Federally-assisted housing. For more information, see the Community and Safety and Conservation website at *www.hud.gov/offices/pih/divisions/cscd/.*

(B) Rating Factor: Capacity—21 Points Total.

The term ‘‘your Team’’ includes your HOPE VI Coordinator (an individual designated by the PHA who may be a staff member or contractor), PHA staff who will be involved in HOPE VI grant administration, and developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified and/or proposed to carry out program activities.

(1) Development Capacity.

(a) Capacity of Developer—6 Points

(i) You will receive 6 Points if:

(*A*) Your Developer or other Team members have extensive, recent, and successful experience in planning, implementing, and managing physical development, financing, leveraging, and partnership activities that are comparable in character, scale, and complexity to your proposed revitalization activities;

(*B*) You propose development using low-income tax credits, and you, your Developer, or other Team members have relevant tax credit experience; and

(*C*) Homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, you, your Developer, or other Team members have relevant, successful experience in development, sales, and/or conversion activities.

(ii) You will receive 4 Points if your Developer or other Team members have some but not extensive experience in the factors described above.

(iii) You will receive 0 Points if your Developer or other Team members do not have the experience described and the application does not demonstrate that it has the capacity to carry out your Revitalization Plan. You will also receive 0 Points if there is inadequate information in your application to rate this factor.

(b) Development Capacity of Applicant—6 Points.

(i) You will receive 6 Points if:

(*A*) You have identified potential gaps in your current staffing in relation to development activities, and you have plans to fill such gaps, internally or externally, in a timely manner in order to successfully implement your Revitalization Plan;

(*B*) You have demonstrated that physical development activities will proceed as promptly as possible following grant award, and you will be able to begin significant construction within 23 months of the award of the grant.

(*C*) Your Administrative and Compliance Checkpoints Report, as provided in the HOPE VI Revitalization Application Kit, provides a feasible plan to meet the schedule requirements of Section XIX(B) of this NOFA, with no impediments such as litigation that would prevent timely startup. Those schedules that indicate the soonest startup will be rated the highest.

Threshold: Submission of the Administrative and Compliance Checkpoints Report that conforms to the timeliness requirements of Section XIX(B) of this NOFA is a threshold requirement and not subject to Section XVII(B)(3) with regard to curing deficiencies;

(*D*) Your management experience and previous experience with development activities demonstrates that you have experience in overseeing large scale development, whether it be in-house or implemented by a private entity. In your application, you will describe the dollar amount and timeframe for completion of the project(s); and

(*E*) As of the HOPE VI Revitalization application due date, you do not have any outstanding Comprehensive Grant, Comprehensive Improvement Assistance Program, or Capital Fund Program audit findings. If you have such a finding, you cannot receive 6 Points.

(ii) You will receive 4 Points if you have had experience in managing large scale development in accordance with the factors above, but your experience has not been extensive and/or your project(s) were not completed within the timeframe originally established for the project. You will also receive 4 Points if you have extensive experience, but have an outstanding Capital Fund Program audit finding as described in Section (VII)(A)(3)(a) above.

(iii) You will receive 1 Point if your application indicates that you have had little experience in managing large-scale development projects.

(iv) You will receive 0 Points if you do not demonstrate any experience in managing development activities, or if there is inadequate information in your application to rate this factor.

(2) Capacity of Existing HOPE VI Revitalization Grantees.

This Section applies only to applicants that have received HOPE VI Revitalization grants in the past, excluding those awarded in FY 2001. If an applicant has more than one HOPE VI Revitalization grant, each will be rated separately, and the highest deduction will be made. Applicants with only FY 2001 HOPE VI Revitalization grants or no existing HOPE VI Revitalization grants are not subject to this section.

(a) Grant Progress—5 Points.

5 Points will be deducted if you have not carried out the following activities within the timeframes established in your first schedule entered into the HOPE VI Quarterly Report system. Although HUD may have approved an extension(s), this factor will be measured against the original due dates. HUD will determine this factor based on internal information on existing grants.

(i) Supplemental Submissions submitted;

(ii) CSS Workplan submitted;

(iii) Program Manager procured;

(iv) Master Development Agreement executed.

(b) Obligation Rate.

Up to 5 Points will be deducted if a Grantee has obligated its grant funds as follows. Obligation rates will be determined from LOCCS reports generated as of March 31, 2002, *Except in the case of some moving to work applicants, which are not required to enter obligations into LOCCS in accordance with their MTW agreements. Those PHAS must provide a certification of their obligation rate in their applications in order to receive any points for this rating factor.*

Percent obligated	Points deducted
Grants Awarded in FY 1996 or prior	
100 Percent	0 Points
90–99 Percent	1 Point
80–89 Percent	2 Points
70–79 Percent	3 Points
60–69 Percent	4 Points
less than 60 Percent	5 Points
Grants Awarded in FY 1997	
95–100 Percent	0 Points
85–94 Percent	1 Point
75–84 Percent	2 Points
65–74 Percent	3 Points
55–64 Percent	4 Points
less than 55 Percent	5 Points
Grants Awarded in FY 1998	
85–100 Percent	0 Points
75–84 Percent	1 Point
65–74 Percent	2 Points
55–64 Percent	3 Points
45–54 Percent	4 Points
less than 45 Percent	5 Points
Grants Awarded in FY 1999	
80–100 Percent	0 Points
70–79 Percent	1 Point
60–69 Percent	2 Points
50–59 Percent	3 Points
40–49 Percent	4 Points
less than 40 Percent	5 Points
Grants Awarded in FY 2000	
75–100 Percent	0 Points
65–74 Percent	1 Point
55–64 Percent	2 Points
45–54 Percent	3 Points
35–44 Percent	4 Points
less than 35 Percent	5 Points

(3) CSS Program Capacity—3 Points.

You will receive 1 Point for each of the following criteria that you demonstrate in your application. See Section XI(B) of this NOFA for detailed information on CSS activities.

(a) You will receive 2 Points:

(i) If you propose to carry out your CSS Plan in-house and you have recent, successful experience in planning, implementing, and managing the types of CSS activities proposed in your application, or

(ii) You propose that CSS activities be carried out by members of your Team, you have procured a member(s) of your Team who has the qualifications and experience to plan, implement, manage, and coordinate the types of activities proposed, and/or you have a plan for promptly hiring staff or procuring a Team member to do so.

(b) If you have an existing HOPE VI grant, you will receive 1 Point if you demonstrated that your proposed CSS Team will be adequate to implement a new program without weakening your existing Team. If you do not have an existing HOPE VI Revitalization grant, you will automatically receive this Point.

(4) Property Management Capacity—4 Points.

(a) Property management activities may be the responsibility of the PHA or another member of the Team, which may include a separate entity that you have procured or will procure to carry out property management activities. In your application you will describe the number of units and the condition of the units currently managed by you or your property manager, your annual budget for those activities, and any awards or recognition that you or your property manager have received.

(b) Past Property Management Experience—3 Points.

(i) You will receive 3 Points if:

(*A*) You or your property manager currently has recent, successful experience in property management of the housing types included in your revitalization plan. This may include market rate rental housing, public housing, and/or other affordable housing, including rental units developed with low-income housing tax credit assistance. If your Revitalization Plan includes cooperatively-owned housing, rent-to-own units, or other types of managed housing, you must demonstrate recent, successful experience in the management of such housing by the relevant member(s) of your Team, and

(*B*) You or your property manager has excellent knowledge and recent, successful experience in property management of market rate, affordable and/or public housing.

(ii) You will receive 1 Point if your application demonstrates that you or your property manager has some but not extensive experience of the kind required for your Revitalization Plan.

(iii) You will receive 0 Points if your application does not demonstrate that you or your property manager has the capacity to manage your proposed plan, or if there is inadequate information in your application to rate this factor.

(c) Property Management Plan—1 Point.

(i) You will receive 1 Point if your application provides a detailed description of the goals and plans of you or your property manager to administer the following elements:

Property maintenance
Rent collection
MTCS reporting
Site-based management experience
Tenant grievances
Evictions
Occupancy rate
Unit turnaround
Preventive maintenance
Work order completion
Project-based budgeting
Management of Homeownership and rent-to-own programs
Energy Audits

(ii) You will receive 0 Points if there is insufficient information in your application to rate this factor.

(5) PHA Plan—2 Points.

(a) You will receive 2 Points if you have incorporated the revitalization plan described in your application into your PHA Plan, and your PHA Plan has been approved by your local HUD Field Office.

(b) You will receive 1 Point if:

(i) You have incorporated the revitalization plan described in your application into your PHA Plan, but your PHA plan has not been approved by your local HUD Field Office, or

(ii) The Field Office has approved your PHA Plan, but the revitalization plan described in your application has not been incorporated into the PHA Plan.

(c) You will receive 0 Points if you have not incorporated the revitalization plan described in your application into your PHA Plan, or if there is insufficient information in your application to rate this factor.

VIII. Need

(A) Threshold: Severe Distress.

(1) The targeted public housing project or building in a project must be severely distressed. In accordance with Section 24(j)(2) of the 1937 Act, the term ''severely distressed public housing'' means a public housing project (or building in a project):

(a) That:

(i) Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project;

(ii) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(iii) (*A*) Is occupied predominantly by families who are very low-income families with children, are unemployed, and dependent on various forms of public assistance; or

(*B*) Has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area;

(iv) Cannot be revitalized through assistance under other programs, such as the Capital and Operating Funds Programs for public housing under the Act, or the programs under Sections 9 and 14 of the 1937 Act (as in effect before the effective date under Section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998, referred to as the Public Housing Reform Act), because of cost constraints and inadequacy of available amounts; and

(v) In the case of individual buildings, is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization; or

(b) That was a project described in Section VIII(A)(1)(a) that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance).

(2) A severely distressed project that has been legally vacated or demolished (but for which HUD has not yet provided replacement housing assistance, other than tenant-based assistance) must have met the definition of physical distress as of the day the demolition application approval letter was dated by HUD.

(3) To meet the severe distress requirement, you must certify that the public housing project or building in a project targeted in your HOPE VI application meets the definition of severe distress provided in Section VIII(A)(1). You will make this certification by signing the HOPE VI Revitalization Grant Applicant Certifications. The certification form is included in the HOPE VI Application Kit, and the text of the certification is included as Appendix A to this HOPE VI NOFA.

(4) In order to certify to the severe physical distress described in Section VIII(A)(1)(a) of this NOFA, your application must include a certification that is signed by an engineer or architect licensed by a state licensing board. The license does not need to have been issued in the same state as the severely distressed project. The engineer or architect must include his or her license number and state of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city.

(B) Rating Factor: Need—26 Points Total.

(1) Need for Revitalization: Severe Physical Distress—10 Points

HUD will evaluate the extent of the severe physical distress of the targeted public housing project. If the targeted units have already been demolished, HUD will evaluate your description of the extent of the severe physical distress of the site as of the day the demolition application was approved by HUD. You will receive Points for the following separate subfactors, as indicated.

(a) You will receive 2 Points if you demonstrate that there are major deficiencies in the project's infrastructure, roofs, electrical, plumbing, heating and cooling, mechanical systems, settlement, and/or other deficiencies in Housing Quality Standards.

(b) You will receive 2 Points if you demonstrate that there are poor soil conditions, inadequate drainage, deteriorated laterals and sewers, and/or inappropriate topography.

(c) You will receive 3 Points if you demonstrate that the project has major design deficiencies, including:

(i) Inappropriately high population density, room, and/or unit size and configurations;

(ii) Isolation;

(iii) Indefensible space;

(iv) Significant utility expenses caused by energy conservation deficiencies that may be documented by an energy audit; and/or

(v) Inaccessibility for persons with disabilities with regard to individual units, entrance ways, and/or common areas.

(d) You will receive 3 Points if you demonstrate that there are extreme levels of unmitigated lead-based paint, PCBs, mold, and/or asbestos that make the site or a portion of the site and its housing structures unsuitable for residential use.

(2) Need for Revitalization: Impact of the Severely Distressed Site on the Surrounding Neighborhood—5 Points

HUD will evaluate the extent to which the severely distressed public housing project is a significant contributing factor to the physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood. In making this determination, HUD will evaluate your description of your narrative, crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and indications of neighborhood disinvestment.

(a) You will receive 5 Points if your narrative adequately demonstrates that the project has an enormous impact on the surrounding neighborhood, as documented by each item listed above.

(b) You will receive 3 Points if your narrative demonstrates that the project has a moderate impact on the neighborhood, and/or only some of the items listed above are adequately documented.

(c) You will receive 0 Points if your narrative does not demonstrate that the project has an impact on the surrounding neighborhood, or there is inadequate information in your application to rate this factor.

(3) Need for Funding: Obligation of Capital Funds—8 Points

HUD will evaluate the extent to which you could undertake the proposed revitalization activities without a HOPE VI grant. Large amounts of available Capital Funds indicate that the revitalization could be carried out without a HOPE VI grant.

HUD will use data from the latest quarterly obligation report available at the time of the grant application deadline date to determine the amount of unobligated FY 1999–2001 Capital Grant (including CIAP and CGP) funds currently available that could be used to carry out the proposed revitalization activities. Applicants must ensure that their obligation and expenditure information was updated in LOCCS prior to March 31, 2002, unless an extension has been approved by the Deputy Secretary. Information provided in the application will not be considered, except in the case of some moving to work applicants, which are not required to enter obligations into LOCCS in accordance with their MTW agreements. Those PHAS must provide a certification of their obligation rate in their applications in order to receive any points for this rating factor.

(a) You will receive 8 Points if your unobligated Capital Funds balance is up to 20 percent of the amount of HOPE VI funds requested.

(b) You will receive 6 Points if your unobligated balance is 21–45 percent of the amount of HOPE VI funds requested.

(c) You will receive 4 Points if your unobligated balance is 46–70 percent of the amount of HOPE VI funds requested.

(d) You will receive 2 Points if your unobligated balance is 71 to 90 percent of the amount of HOPE VI funds requested.

(e) You will receive 0 Points if your unobligated balance is more than 90 percent of the amount of HOPE VI funds requested.

(4) Need for Affordable Housing in the Community—3 Points

There must be a need for affordable housing in the community, measured by the supply of other housing available and affordable to families receiving tenant-based assistance under Section 8.

Affordable housing is measured by the supply of housing units available in your community with rents that would qualify for Section 8 assistance. To make this calculation, use the most recently published FMR for a 3 bedroom apartment. For the same community (the jurisdiction covered by the FMR), examine the apartment listings in a newspaper of general circulation that serves the majority of that community. Determine the number of low-income units with rents at or below the FMR for your community, over a period of any 30 days during the application review period. In your application you will document information about your analysis.

(a) You will receive 3 Points if the average market rental costs are over 130 percent of Section 8 fair market rents.

(b) You will receive 2 Points if the average market rental costs are over 120 percent of Section 8 fair market rents.

(c) You will receive 1 Point if the average market rental costs are over 110 percent of Section 8 fair market rents.

(d) You will receive 0 Points if the average market rental costs are 110 percent or less or if there is inadequate information to rate this factor.

IX. Match and Leveraging

(A) Match Requirements.

(1) Overall Match. In accordance with Section 24(c) of the 1937 Act, if you are selected for funding, you must supplement your HOPE VI Revitalization grant with funds from other sources greater than or equal to 5 percent of the HOPE VI funds provided.

(2) Additional Community and Supportive Services (CSS) Match. In addition to supplemental amounts provided in accordance with Section (1) above, if you are selected for funding and propose to use more than 5 percent of your HOPE VI grant for CSS activities (you may use up to 15 percent of your grant for such activities), you must provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant that you will use for CSS activities.

(3) Matching funds must be directly applicable to the revitalization of the site and the transformation of the lives of residents.

(4) Grantees must provide matching funds which, combined with HOPE VI funds, will enable them to carry out revitalization activities, including CSS activities. Applicants must show firm commitments in the amounts required for match in their applications in order to be funded. Grantees will be required to show evidence that matching resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of matching funds may be substituted after grant award, as long as the dollar requirement is met.

(5) Grantees must pursue and enforce any commitment (including commitments for services) obtained from any public or private entity for any contribution or commitment to the project or surrounding area that was used for leverage in their HOPE VI applications.

(6) *Threshold:* You must provide evidence that you have met your match requirement in the application. This means that the amount of match accepted by HUD must be at least 5 percent of total grant. You must also meet CSS match requirement of one for one for every dollar used for CSS over

five percent of the grant. (i.e., a request for 15 percent of the grant for CSS would require a dollar for dollar match of the amount requested for CSS over that first 5 percent.)

(B) Leverage. Although related to match, leverage is strictly a rating factor. Leverage consists of firm commitments of funds and other resources that are over and above the amount documented as match. HUD will rate your application based on the amount of funds and other resources that will be leveraged by the HOPE VI grant as a percentage of the amount of HOPE VI funds requested.

(C) Resource Documentation. In your application, you will enter basic information about each resource on the appropriate resource summary form: name of the organization providing the resource, the dollar value of the resource, and its proposed use.

(1) For each resource you list, you must provide a commitment document, such as a letter, memorandum of understanding, agreement to participate, city council resolution, or other evidence of the resource to be committed. The commitment cannot be conditioned on anything other than the receipt of the HOPE VI grant. The commitment document must be signed by an official of the organization legally authorized to make commitments on behalf of the organization.

(2) Each commitment document must include the dollar value of the commitment, and that dollar value must be consistent with the amount entered on the Resource Summary Form. On the form you will also enter the page number of your application where the commitment document is located.

(3) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(4) Each resource may be used for only one category: Development, CSS, Anticipatory, or Collateral, as described below. Any resource listed in more than one category will be disqualified from all categories.

(5) For CSS purposes, include only funds that will be newly generated for HOPE VI activities. HUD will not count any funds that have been provided routinely, such as TANF payments or funds that support ongoing CSS-type activities.

(6) Even though an in-kind CSS contribution may count as a resource, it may not be appropriate to include on the sources and uses attachment. Each source on the sources and uses attachment must be matched by a specific and appropriate use. For example, donations of staff time may not be used to offset costs for infrastructure.

(D) Types of Development Resources. HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other physical development funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market rate housing, and private retail and economic development. Types of resources that may be counted include:

(1) Private mortgage-secured loans and other debt. Note the term maturity expected and sources of repayment of all loans.

(a) Where there is both a construction loan and a permanent take-out loan, you must provide documentation of both, but only the value of the permanent loan will be counted as leverage.

(b) For privately-financed homeownership construction loans, acceptable documentation of construction loans will be considered as leverage. Documentation of permanent financing is not required.

(c) If you have obtained a construction loan but not a permanent loan, the value of the acceptably documented construction loan will be counted as leverage.

(2) Insured loans.

(3) Donations and contributions.

(4) Housing trust funds.

(5) Net sales proceeds from a homeownership project.

(6) Funds committed to build private sector housing in direct connection with the HOPE VI Revitalization Plan.

(7) Tax Increment Funding (TIF).

(8) Tax Exempt Bonds. Describe use and term.

(9) Other Federal Funds. Other Federal sources may include funds provided by the Capital Fund or other HUD-provided public housing funds (except for HOPE VI funds), including funds derived from program income.

(10) Low Income Housing Tax Credits (LIHTC). Low Income Tax Credits are authorized by Section 42 of the IRS Code which allows investors to receive a credit against Federal tax owed in return for providing funds to developers to help build or renovate housing that will be rented only to lower-income households for a minimum period of years. There are two types of credits, both of which are available over a 10-year period: a 9 percent credit on construction/rehab costs, and a 4 percent credit on acquisition costs and all development costs financed partially with below-market Federal loans (e.g. tax exempt bonds). Tax credits are generally allocated annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/ncsha/public/statehfadirectory/index.htm*.

(a) If you propose to include LIHTC equity as a development resource for your first phase of development, your application must include a LIHTC allocation letter from your State or local Housing Finance Agency. This letter must constitute a firm commitment, and can only be conditioned on the receipt of the HOPE VI grant.

(b) If you propose to include LIHTC equity as a development resource for phases of development other than your first phase, your application must include a commitment letter from your State or local Housing Finance Agency that provides information from the allocation plan, including:

(i) The total amount and type (4 percent vs. 9 percent) of tax credits available,

(ii) The dollar amount expected from the sale of equity. If this information is not provided, HUD will count 80 percent of the total tax credit amount;

(iii) Any setasides available for PHAs;

(iv) Any per-project funding limits;

(v) The schedule of funding rounds;

(vi) Verification that your project meets eligibility criteria; and

(vii) A plan and/or schedule for obtaining future tax credits for any later phases that have not yet been obtained.

(E) Sources of Development Resources. You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort. Sources of resources that can be used for leveraging may include:

(1) Public, private, and non-profit entities, including LIHTC purchasers;

(2) State and local Housing Finance Agencies;

(3) Local governments.

(4) The city's housing and/or redevelopment agency or other comparable agency. HUD will consider this to be a separate entity with which you are partnering if your PHA is also a redevelopment agency or otherwise has citywide responsibilities.

(a) You are strongly urged to seek a pledge of Community Development Block Grant (CDBG) funds for improvements to public infrastructure such as streets, water mains, etc. related to the revitalization effort. CDBG funds are awarded by HUD by formula to units of general local government and to states, which may then award a grant or loan to a PHA, a partnership, a non-profit organization, or other entity for revitalization activities, including loans to a project's for-profit partnership.

More information about the CDBG Program can be found at *www.hud.gov/offices/cpd/index.cfm*.

(b) The city, county or state may provide HOME funds to be used in conjunction with HOPE VI funds. The Home Investment Partnership Program provides housing funds that are distributed from HUD to units of general local governments and states. Funds may be used for new construction, rehabilitation, acquisition of standard housing, assistance to homebuyers, and tenant-based rental assistance. Current legislation allows HOME funds to be used in conjunction with HOPE VI funds, but they may not be used in conjunction with Public Housing Capital Funds under Section 9(d) of the 1937 Act. Information about the HOME Program can be found at: *www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm*.

(5) Foundations.

(6) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac.

(7) HUD and other Federal agencies.

(8) Financial institutions, banks or insurers.

(9) Other private funders.

(F) CSS Resources. In order to achieve quantifiable self-sufficiency results, you must form partnerships with organizations that are skilled in the delivery of services to residents of public housing and that can provide commitments of resources to support those services. Leveraging scarce HOPE VI CSS funds with other funds and services is critical to the sustainability of CSS activities so that they will continue after the HOPE VI funds have been expended.

(1) Types of CSS Resources.

The dollar value of in-kind contributions related to the provision of CSS activities that will contribute to the successful transformation of the lives of residents include:

(a) Materials;

(b) A building;

(c) A lease on a building;

(d) Other infrastructure;

(e) Time and services contributed by volunteers;

(f) Staff salaries and benefits; and

(g) Supplies.

Note that wages projected to be paid to residents through jobs provided by CSS Partners will not be counted as leverage.

(2) Sources of CSS Resources. See Section XI(C) for a list of the kinds of organization, agencies, and other possible resource providers.

(G) Rating Factor: Leveraging—17 Points Total.

(1) Development Leveraging—7 Points.

For each commitment document, HUD will evaluate the strength of commitment and add the amounts that are acceptably documented. HUD will then calculate the ratio of the amount of HUD funds requested to the amount of funds that HUD deems acceptably documented. HUD will round figures to two decimal points, using standard rounding rules.

(a) You will receive 7 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the dollar value of documented, committed development resources from other sources is 1:3 or higher.

(b) You will receive 6 Points if the ratio is between 1:2.50 and 1:2.99.

(c) You will receive 5 Points if the ratio is between 1:20 and 1:2.49.

(d) You will receive 4 Points if the ratio is between 1:1.50 and 1:1.99.

(e) You will receive 3 Points if the ratio is between 1:1. 0 and 1:1.49.

(f) You will receive 2 Points if the ratio is between 1:0.50 and 1:0.99.

(g) You will receive 1 Point if the ratio is between 1:0.25 to 1:0.50.

(h) You will receive 0 Points if the ratio is less than 1:0.25 or there is inadequate information in your application to rate this factor.

(2) CSS Leveraging.

(a) Amount of CSS Leveraged Resources—5 Points.

(i) You will receive 5 Points if the ratio of the amount of HOPE VI funds requested for CSS activities to the dollar value of documented, committed CSS resources leveraged from other sources is 1:4 or higher. If no HOPE VI funds are requested for CSS activities because all CSS funds will come from outside sources, all adequately-documented funds from such outside sources will be counted and you will receive 5 Points.

(ii) You will receive 4 Points if the ratio is between 1:3.5 and 1:4.

(iii) You will receive 3 Points if the ratio is between 1:3 and 1:3.5.

(iv) You will receive 2 Points if the ratio is between 1:2.5 and 1:3.

(v) You will receive 1 Point if the ratio is between 1:2 and 1:2.5.

(vi) You will receive 0 Points if the ratio is less than or equal to 1:2, or there is inadequate information in your application to rate this factor.

(b) Variety of CSS Leveraged Resources—1 Point.

You will receive 1 Point if you have obtained eligible leveraging funds from a variety of sources, including 3 or more kinds of entities listed below:

(i) State and local governments;

(ii) Private service providers;

(iii) Nonprofits/faith based organizations;

(iv) Financing entities;

(v) Developers.

(3) Anticipatory Resources Leveraging—2 Points.

In many cases, PHAs, cities, or other entities may have carried out revitalization activities (including demolition) in previous years in anticipation of your receipt of a HOPE VI Revitalization grant. These expenditures, if documented, may be counted as leveraged anticipatory resources. They cannot duplicate any other type of resource, and cannot be counted towards match.

(a) You will receive 2 Points if the ratio of your documented anticipatory resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is 1:1.0 or higher.

(b) You will receive 0 Points if the ratio of your documented anticipatory resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) resources is less than 1:.1.

(4) Collateral Investment Leveraging—2 Points.

Collateral Investment includes physical redevelopment activities underway or projected to be completed before October 2007 that will enhance the new HOPE VI community, but will occur whether or not the public housing project is revitalized. This includes economic or other kinds of development activities that would have occurred with or without the anticipation of HOPE VI-funds. These resources cannot duplicate any other type of resource, and cannot be counted as match. The resources are subject to the same restrictions regarding and documentation. Collateral investment resources are counted as leverage only and cannot be counted towards match. Examples of Collateral Investments include schools, libraries, subway or light rail stations, improved roads, day care facilities, and local medical facilities.

(a) You will receive 2 Points if the ratio of your documented collateral resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is 1:1.0 or higher.

(b) You will receive 0 Points if the ratio of your documented collateral resources to the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) is less than 1:.1.

X. Resident and Community Involvement

(A) Requirements and Thresholds.

(1) General. You are required to involve residents and the broader community in the planning, proposed implementation, and management of your Revitalization Plan. HUD will evaluate the nature, extent, and quality of the resident and community outreach and involvement you have achieved by the time your application is submitted, as well as your plans for continued and/or additional outreach and involvement.

(2) Resident Training Session. You must conduct at least one training session for residents of the severely distressed project on the HOPE VI development process. HUD does not prescribe the content of this meeting.

(3) Public Meetings.

(a) You must conduct at least three public meetings with residents and the broader community, in order to involve them in a meaningful way in the process of developing the Revitalization Plan and preparing the application.

(b) During the course of the three meetings, you must address the following issues listed below (i.e., all issues need not be addressed at each meeting):

(i) The HOPE VI planning and implementation process;

(ii) The proposed physical plan, including site and unit design;

(iii) The extent of proposed demolition;

(iv) Planned community and supportive service activities;

(v) Other proposed revitalization activities;

(vi) Relocation issues, including relocation planning, mobility counseling, and maintaining the HOPE VI community planning process during the demolition and reconstruction phases where temporary relocation is involved;

(vii) Reoccupancy plans and policies, including site-based waiting lists; and

(viii) Section 3 and employment opportunities to be created as a result of redevelopment activities.

(4) All training sessions and meetings must be held in facilities that are accessible to persons with disabilities, provide services such as day care, transportation, and sign language interpreters as appropriate, and as practical and applicable, be conducted in English and the language(s) most appropriate for the community.

(5) The training session and each of the public meetings must be held after the publication date of this NOFA.

Threshold: In your application you must provide a signed certification that the above resident training session and public meetings were held and that the topics listed above were covered. The certification must include the dates of the training session and meetings. If, after the deficiency cure period, this certification is not included in your application, the application will be ineligible for funding.

(B) Resident and Community Involvement Rating—3 Points.

You will receive 1 Point for each of the following criteria met in your application, which are over and above the threshold requirements listed in Section (A) above.

(1) You demonstrate that you have communicated regularly and significantly with affected residents and members of the surrounding community about the development of your Revitalization Plan by giving residents and community members information about your actions regarding the Revitalization Plan and providing a forum where residents and community members can contribute recommendations and opinions with regard to the development and implementation of the Revitalization Plan.

(2) You describe your efforts, past and proposed, to make appropriate HUD communications about HOPE VI available (i.e., a copy of the NOFA, computer access to the HUD website, etc.).

(3) You describe your plans to provide affected residents with reasonable training on the general principles of development, technical assistance, and capacity building so that they may participate meaningfully in the development and implementation process.

XI. Community and Supportive Services

(A) CSS Program Requirements.

(1) Your CSS Team and Partners.

(a) The term ''CSS Team'' refers to PHA staff members and/or any consultants who will have the responsibility to design, implement, and manage your CSS Program.

(b) The term ''CSS Partners'' refers to the agencies and organizations that you will work with to provide supportive services for residents. A Partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local TANF agency that works with you to ensure that their services are coordinated and comprehensive.

(2) Maximum CSS grant amount. Consistent with Section 24(j)(3) of the 1937 Act, you may use an amount up to 15 percent of the total HOPE VI Grant to pay the costs of CSS activities. You may spend additional sums on CSS activities using donations, other HUD funds made available for that purpose, or other PHA funds. See Section IX(A)(2) of this NOFA for CSS grant matching requirements.

(3) CSS Endowment Trust. Consistent with Section 24(d)(2) of the Act, you may deposit up to 15 percent of your HOPE VI grant (the maximum amount of the award allowable for CSS activities) into an Endowment Trust to provide CSS activities. In order to establish an Endowment Trust, you must first execute with HUD a HOPE VI Endowment Trust Addendum to the Grant Agreement. When reviewing your request to set up an Endowment Trust, HUD will take into consideration your ability to pay for current CSS activities with HOPE VI or other funds and the projected long-term sustainability of the Endowment Trust to carry out those activities.

(4) Subgrant Agreements. You may enter into subgrant agreements with non-profit or State or local governments for the performance of CSS activities in accordance with your approved CSS work plan.

(5) Neighborhood Networks. All Revitalization grantees will be required to establish Neighborhood Networks Centers. This program provides residents with on-site access to computer and training resources. HUD will make technical assistance available to each PHA where needed. Grantees may use HOPE VI funds to establish Neighborhood Networks. In addition, $5 million will be made available for Neighborhood Networks in accordance with Section II(C) of this NOFA. More information on the requirements of the Neighborhood Networks Center Program is available on the Neighborhood Networks website at *www.hud.gov/nnw/nnwindex.html.*

(6) CSS activities must be consistent with State and local welfare reform requirements and goals.

(7) The objectives of your CSS Program must be results-oriented, with quantifiable goals and outcomes that can be used to measure progress and make changes in activities as necessary.

(8) CSS activities must be of an appropriate scale, type, and variety to meet the needs of all residents (including adults, youth ages 16 to 21, and children) of the severely distressed project, including residents remaining on-site, residents who will relocate permanently to other PHA units or Section 8 housing, residents who will relocate temporarily during the

construction phase, and new residents of the revitalized units.

(9) Non-public housing residents may also participate in CSS activities, as long as the primary participants in the activities are residents as described in Section (8) above.

(10) Your CSS activities must be coordinated with the efforts of other service providers in your locality, including non-profit organizations, educational institutions, and state and local programs.

(11) CSS activities must be well integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities.

(12) CSS Programs must be carefully planned so that they will be sustainable after the HOPE VI grant period ends.

(B) CSS activities may include, but are not limited to:

(1) Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions.

(2) Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or post-secondary education, assistance in the attainment of certificates of high school equivalency, and English as a Second Language courses, as needed.

(3) Job readiness and retention activities, which frequently are key to securing private sector commitments to the provision of jobs.

(4) Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement.

(5) Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is a program which has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized State agency, by OATELS. See also DOL regulations at 29 CFR part 29.

(6) Life skills training on topics such as parenting, consumer education, and family budgeting.

(7) Creation and operation of credit unions to serve residents, including capitalization and technical assistance to foster new credit unions on-site and to encourage existing community credit unions to expand their coverage to include on-site coverage.

(8) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency Program can also be used to promote homeownership, providing assistance with escrow accounts and counseling.

(9) Coordinating with health care services providers or providing on-site space for a health clinic, doctors, a wellness center, dentists, etc. that will primarily serve the public housing residents. HOPE VI funds may not be used to provide direct medical care to residents.

(10) Substance/alcohol abuse treatment and counseling.

(11) Activities that address domestic violence treatment and prevention.

(12) Child care services that provide sufficient hours of operation to facilitate parental access to education and job opportunities, serve appropriate age groups, and stimulate children to learn.

(13) Transportation, as necessary, to enable all family members to participate in available CSS activities and/or to commute to their places of employment.

(14) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses.

(C) CSS Partnerships and Resources. The following are the kinds of organizations and agencies that can provide you with in-kind, financial, and other types of resources necessary to carry out and sustain your CSS activities.

(1) Local Boards of Education, public libraries, local community colleges, institutions of higher learning, non-profit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(2) TANF agencies/welfare departments.

(3) Job development organizations that link private sector or non-profit employers with low-income prospective employees.

(4) Workforce Development Agencies.

(5) Organizations that provide residents with job readiness and retention training and support.

(6) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(7) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(8) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, state charter schools, TANF, foundations, and private funding sources have been or could be established, such as:

(a) Youthbuild. HUD's Youthbuild Program provides grants to organizations that provide education and job training to young adults ages 16 to 24 who have dropped out of school. Participants spend half their time rehabilitating low-income housing and the other half in educational programs. Youthbuild provides a vehicle for achieving compliance with the objective of Section 3, as described in Section XIII(D)(2)(a) of this NOFA. More information on HUD's Youthbuild Program can be found at *www.hud.gov/progdesc/youthb.cfm.*

(b) Step-Up, an apprenticeship-based employment and training program that provides career potential for low-income persons by enabling them to work on construction projects that have certain prevailing wage requirements. Step-Up encourages work by offering apprenticeships through which low-income participants earn wages while learning skills on the job, supplemented by classroom-related instruction. Step-Up can also contribute to a PHA's effort to meet the requirements of Section 3. More information can be found at *www.hud.gov/progdesc/stepup.cfm.*

(9) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(10) Non-profit organizations such as the Girl Scouts and the Urban League, both of which have Memoranda of Agreement (MOA) with HUD. Copies of these MOAs can be found on the HOPE VI Home Page at *www.hud.gov/hopevi.*

(11) Civil rights organizations.

(12) Local area agencies on aging.

(13) Local agencies and organizations serving persons with disabilities.

(14) Faith-based and Other Community-based Organizations. HUD encourages you to partner or subgrant

with grassroots faith-based and other community-based organizations to provide CSS activities. Such organizations have a strong history of providing vital community services such as job training, childcare, relocation supportive services, youth programs, technology training, transportation, substance abuse programs, crime prevention, and health services. They also provide counseling for individuals and families on fair housing rights, and homeownership and rental housing opportunities in the neighborhood of their choice. HUD believes that grassroots organizations, e.g. civic organizations, congregations, national and local self-help homeownership organizations, faith-based and other community-based organizations should be more effectively used, and has placed a high priority on expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. See HUD's Center for Faith-Based and Community Initiatives website at *www.hud.gov/offices/fbci/index.cfm.*

(a) HUD will consider an organization a "grassroots" organization if it is headquartered in the local community to which it provides services; and

(i) Has an annual social services budget of no more than $300,000. This cap includes only the portion of the organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses; or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered "grassroots." (D) Rating Factor: CSS Program—6 Points Total. In your application you will describe your CSS plan, including any plans to implement a CSS Endowment Trust. Each of the following subfactors will be rated separately.

(1) You will receive 2 Points if you demonstrate that you will be able to provide case management within 30 days from the date of grant award execution so that residents who will be relocated have time to participate and benefit from CSS activities before leaving the site.

(2) You will receive 1 Point if you have proposed a high quality, results-oriented CSS plan that includes strong components of the basic elements of education, job training, and services that will enable all affected residents to transform their lives.

(3) You will receive 1 Point if you provide letters from a variety of experienced organizations and service providers that represent strong relationships and commitments to participate in your CSS activities and accomplish your CSS goals of the program.

(4) You will receive 1 Point if your CSS Program has been developed in response to a rigorous resident needs identification process and directly responds to the identified needs.

(5) You will receive 1 Point if your CSS Program includes a case management system that provides services to individual residents.

XII. Relocation

(A) Definition. You must provide suitable, decent, safe, and sanitary housing for each family required to relocate as a result of revitalization activities under your Revitalization Plan. Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), and the implementing government-wide regulation at 49 CFR part 24. The relocation requirements of the URA and the government-wide regulations cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance.

(B) Relocation Guidelines.

(1) The HOPE VI Relocation Plan is intended to ensure that PHAs adhere to the URA and that all residents who have been or will be temporarily or permanently relocated from the site are provided with CSS activities such as mobility counseling and direct assistance in locating housing.

(2) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, non-profit and/or other organizations, and/or individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. HUD will view favorably innovative programs such as community mentors, support groups, and the like.

(3) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

(C) Standard Relocation Requirements. You must carry out relocation activities in compliance with a relocation plan that conforms with the following statutory and regulatory requirements, as applicable:

(1) Relocation or temporary relocation carried out as a result of rehabilitation under an approved Revitalization Plan is subject to the URA, the URA regulations at 24 CFR part 24, and regulations at 24 CFR 968.108 or successor part.

(2) Relocation carried out as a result of acquisition under an approved Revitalization Plan is subject to the URA and regulations at 24 CFR 941.207 or successor part.

(3) Relocation carried out as a result of disposition under an approved Revitalization Plan is subject to Section 18 of the 1937 Act, as amended.

(4) Relocation carried out as a result of demolition under an approved Revitalization plan is subject to the URA.

(D) *Threshold:* The HOPE VI Revitalization Relocation Plan. Each applicant must complete a HOPE VI Relocation Plan. In your application, you must submit a certification that the HOPE VI Relocation Plan has been completed, and that it conforms to the URA requirements as described in Section XII(C) above.

(E) Rating Factor: Relocation—5 Points Total.

(1) You will receive 5 Points if you provide a certification that all of the residents of the targeted severely distressed public housing project have been relocated as of the HOPE VI Revitalization application due date. If you qualify for these 5 Points, you are not eligible for any additional Points described below.

(2) You will receive 4 Points if you describe in your application:

(a) An effective plan to track residents who have been or will be relocated from the targeted project; and

(b) A comprehensive plan that will provide mobility counseling and direct assistance in locating housing to residents who choose Section 8 assistance that will help them to fully understand the full range of housing opportunities available to them in neighborhoods throughout the jurisdiction and to find housing in non-poverty areas.

(3) You will receive 2 Points if you meet only one of the factors described in Section (1) above.

(4) You will receive 0 Points if your application does not meet either of the factors described in Section (2) above, or if there is inadequate information in the application to rate this factor.

XIII. Fair Housing and Equal Opportunity

(A) Housing and Services for Persons with Disabilities.

(1) Accessibility Requirements. HOPE VI developments are subject to the accessibility requirements contained in several Federal laws. All applicable laws must be read together and followed. PIH Notice 2002–1, available at *http://www.hud.gov/offices/pih/publications/notices/02/pih2002–1.pdf,* provides an overview of all pertinent laws and implementing regulations pertaining to HOPE VI. Also see HUD's Fair Housing website at *www.hud.gov/groups/fairhousing.cfm.* Under the Fair Housing Act of 1988, all new construction of covered multifamily buildings must include certain features of accessible and adaptable design. Units covered are all those in buildings with four or more units and one or more elevators, and all ground floor units with living area located entirely on the ground floor in buildings without elevators. The accessible design requirements are provided on HUD's FHEO website at *http://www.hud.gov/fhe/fhefha5.html#sect3.*

(2) Specific Fair Housing requirements are:

(a) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100.

(b) The prohibitions against discrimination on the basis of disability, including requirements units that, in certain multifamily housing, meet the Uniform Federal Accessibility Standards and that you make reasonable accommodations to individuals with disabilities under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8.

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 36.

(d) The Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations at 24 CFR part 40.

(B) Rating Factor: FHEO 7 Points Total.

(1) Accessibility—2 Points.

(a) Over and above the accessibility requirements listed above, you will receive 2 Points if you describe a plan to:

(i) Provide accessibility in homeownership units;

(ii) Provide one-bedroom accessible rental units for single individuals with disabilities;

(iii) Provide for accessibility modifications, where necessary, to Section 8 units of residents who relocate from the targeted project due to revitalization activities;

(iv) Where playgrounds are planned, propose ways to make them accessible to children with disabilities, over and above statutory and regulatory requirements; and

(v) Where possible, design units with accessible front entrances.

(b) You will receive 1 Point if your application does not propose to implement all of the accessibility priorities stated above, but provides a detailed explanation as to why you cannot implement all of the priorities.

(c) You will receive 0 Points if you fail to provide a description that meets the specifications above, or if there is inadequate information in your application to rate this factor.

(2) Adaptability—1 Point.

(a) You will receive 1 Point if you specifically describe a plan to meet the adaptability standards adopted by HUD at 24 CFR 8.3 that apply to those units not otherwise covered by the accessibility requirements. Adaptability is the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed so that the unit can be made ready for occupancy by a hearing-impaired person. For information on adaptability, see *www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf.*

(b) You will receive 0 Points if your application does not adequately describe a plan as specified above, or if there is inadequate information in your application to rate this factor.

(3) Visitability—1 Point.

(a) You will receive 1 Point if you specifically describe a plan to meet the visitability standards adopted by HUD that apply to units not otherwise covered by the accessibility requirements. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. See *www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf* for information on visitability. The two standards of visitability are:

(i) At least one entrance at grade (no steps), approached by a sidewalk; and

(ii) The entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space.

(b) You will receive 0 Points if your application does not adequately describe a visitability plan as specified above, or if there is inadequate information in your application to rate this factor.

(C) Fair Housing.

(1) *Threshold:* Compliance with Fair Housing and Civil Rights Laws. All applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a).

HUD will not rate your application for funding under this NOFA if, as of the HOPE VI application due date, you:

(a) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(b) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(c) Have received a letter of non-compliance findings under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974.

HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been resolved to the satisfaction of the Department as of the application due date will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. A charge, lawsuit, or letter of findings issued after the application due date will not affect an applicant's eligibility under this threshold. Examples of such actions which must happen before the application due date include, but are not limited to:

(i) A voluntary compliance agreement signed by all parties in response to the letter of findings;

(ii) A HUD-approved conciliation agreement signed by all parties; or

(iii) An out-of-court settlement of a Department of Justice lawsuit under the Fair Housing Act.

(2) *Threshold:* Desegregation Orders. You must be in full compliance with any desegregation or other court order

related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the application due date.

(3) Site and Neighborhood Standards for Replacement Housing. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and regulations thereunder. In determining the location of any replacement housing, you must comply with either the site and neighborhood standards regulations at 24 CFR 941.202 (b–d) or with the standards outlined below.

(a) Goals of the HOPE VI Program. The HOPE VI Program provides resources to address the needs of severely distressed public housing projects within an administrative framework of less intrusive Federal oversight and increased reliance on informed local decision making. HOPE VI Grants are made so that Grantees can develop and implement comprehensive strategies that address not only the physical and management needs of the projects, but also the social and economic needs of the residents and the surrounding community. You are expected to ensure that your revitalization plan will expand assisted housing opportunities in non-poor and non-minority neighborhoods and/or will accomplish substantial revitalization in the Project and its surrounding neighborhood. You are also expected to ensure that eligible households of all races and ethnic groups will have equal and meaningful access to the housing.

(b) Objectives in Selecting HUD-Assisted Sites. The fundamental goal of HUD's fair housing policy is to make full and free housing choice a reality. Housing choice requires that households of all races can freely decide the type of neighborhood where they wish to reside, that minority neighborhoods are no longer deprived of essential public and private resources, and that stable, racially-mixed neighborhoods are available as a meaningful choice for all. To make full and free housing choice a reality, sites for HUD-assisted housing investment should be selected so as to advance two complementary goals:

(i) Expand assisted housing opportunities in non-minority neighborhoods, opening up choices throughout the metropolitan area for all assisted households; and

(ii) Reinvest in minority neighborhoods, improving the quality and affordability of housing there to represent a real choice for assisted households.

(c) Compliance with Fair Housing Act and Title VI of the Civil Rights Act of 1964. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations, in determining the location of any replacement housing.

(d) Grantee's Election of Requirements. You may, at your election, separately with regard to each site you propose, comply with the development regulations regarding Site and Neighborhood Standards (24 CFR 941.202 (b)–(d)), or with the Site and Neighborhood Standards contained in this Section.

(e) Replacement housing located on site or in the surrounding neighborhood. Replacement housing under HOPE VI that is located on the site of the existing project or in its surrounding neighborhood will not require independent approval under Site and Neighborhood Standards, since HUD will consider the scope and impact of the proposed revitalization to alleviate severely distressed conditions at the public housing project and its surrounding neighborhood in assessing the application to be funded under this NOFA.

(f) Off-Site Replacement Housing Located Outside of the Surrounding Neighborhood. Unless you demonstrate that there are already significant opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or these opportunities are under development), HOPE VI replacement housing not covered by Section (e) above may not be located in an area of minority concentration (as defined in paragraph (g) below) without the prior approval of HUD. Such approval may be granted if you demonstrate to the satisfaction of HUD that:

(i) You have made determined and good faith efforts, and found it impossible with the resources available, to acquire an appropriate site(s) in an area not of minority concentration, or

(ii) The replacement housing, taking into consideration both the CSS activities or other revitalizing activities included in the Revitalization Plan, and any other revitalization activities in operation or firmly planned, will contribute to the stabilization or improvement of the neighborhood in which it is located, by addressing any serious deficits in services, safety, economic opportunity, educational opportunity, and housing stock.

(g) Area of Minority Concentration. The term ''area of minority concentration'' is any neighborhood in which:

(i) The percentage of households in a particular racial or ethnic minority group is at least 20 Points higher than the percentage for the housing market area; i.e., the Metropolitan Statistical Area (MSA) in which the proposed housing is to be located, or

(ii) The neighborhood's total percentage minority is at least 20 Points higher than the percentage for MSA.

(4) Additional Nondiscrimination Requirements. In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), you and your subrecipients must comply with:

(a) The nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);

(b) The Equal Pay Act (29 U.S.C. 206(d);

(c) Title IX of the Education Amendments Act of 1972; and

(d) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(5) Affirmatively Furthering Fair Housing. Section 808(e)(5) of the Fair Housing Act requires HUD to affirmatively further fair housing. HUD requires the same of its grant recipients. If you are a successful applicant, you will have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act. Protected classes are:

(a) Race;
(b) Color;
(c) National origin;
(d) Religion;
(e) Sex;
(f) Disability; and
(g) Familial status.

(6) Ensuring the Participation of Disadvantaged Firms. The Department is committed to ensuring that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on Federal contracts. HUD regulations at 24 CFR 85.36(e) require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that these disadvantaged firms are used when possible. Affirmative steps include:

(a) Placing disadvantaged firms on solicitation lists;

(b) Assuring that disadvantaged firms are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by disadvantaged firms;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by disadvantaged firms;

(e) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(f) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in Sections (a) through (e) above.

(D) Rating Factor: Fair Housing—3 Points Total.

(1) Fair Housing—2 Points.

(a) You will receive 2 Points if your application specifically describes:

(i) Your efforts to attract families with a broad spectrum of incomes to the revitalized site through intensive affirmative marketing efforts and how these efforts contribute to the deconcentration of low-income neighborhoods;

(ii) Your efforts to target your marketing and outreach activities to all segments of the population on a non-discriminatory basis, promote housing choice and opportunity throughout your jurisdiction and contribute to the deconcentration of both minority and low-income neighborhoods. In your application, you must describe how your outreach and marketing efforts will reach out to persons of different races and ethnic groups, families with or without children, persons with disabilities and able-bodied persons, and the elderly; and

(iii) The specific steps you plan to take through your proposed activities to affirmatively further fair housing. These steps can include, but are not limited to:

(*A*) Addressing impediments to fair housing choice relating to your operations;

(*B*) Working with local jurisdictions to implement their initiatives to affirmatively further fair housing;

(*C*) Implementing, in accordance with Departmental guidance, relocation plans that result in increased housing choice and opportunity for residents affected by HOPE VI revitalization activities funded under this NOFA:

(*D*) Implementing admissions and occupancy policies that are nondiscriminatory and help reduce racial and national origin concentrations; and

(*E*) Initiating other steps to remedy discrimination in housing and promote fair housing rights and fair housing choice.

(b) You will receive 1 Point if you address all of the above issues in a general way.

(c) You will receive 0 Points if you do not address all of the above issues, or if there is insufficient information to rate this factor.

(2) Economic Opportunities for Low and Very Low-Income Persons (Section 3)—1 Point.

(a) HOPE VI grantees must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with assisted Projects) and its implementing regulations at 24 CFR part 135. Information about Section 3 can be found at HUD's Section 3 website at *www.hud.gov/fhe/sec3over.html.*

(b) You will receive 1 Point if you describe a feasible plan to implement Section 3 that not only meets the minimum requirements described in Section (a) above but also exceeds those requirements. Your plan must include your goals by age group, types of jobs and other opportunities to be provided, and plans for tracking and evaluation. Section 3 firms must be in place quickly so that residents are trained in time to take advantage of employment opportunities such as jobs and other contractual opportunities in the pre-development, demolition, and construction phases of the revitalization. Your Section 3 plan must demonstrate that you will, to the greatest extent feasible, direct training, employment and other economic opportunities to:

(i) Low- and very low-income persons, particularly those who are recipients of government assistance for housing, and

(ii) Business concerns which provide economic opportunities to low- and very low-income persons.

(c) You will receive 0 Points if your plan to implement Section 3 does not meet the standards listed in Section (b) above, or if there is inadequate information in your application to rate this factor.

XIV. Mixed Income Communities—6 Points Total

(A) On-Site Housing—3 Points.

Your proposed unit mix must be designed to achieve a mixed-income, well functioning community on the revitalized site. Reducing concentration in this context does not necessarily mean reducing density of housing units; a well-run, mixed-income housing community may actually have a higher density given the site's market conditions.

(1) You will receive 3 Points if your application describes a unit mix of more than 35 percent public housing units.

(2) You will receive 2 Points if your application describes a unit mix that is between 25 and 34 percent public housing units.

(3) You will receive 1 Point if your application describes a unit mix of between 15 and 24 percent public housing units.

(4) You will receive 0 Points if your application describes a unit mix that is less than 14 percent, or if there is inadequate information in your application to rate this factor.

(B) Off-Site Housing—1 Point.

(1) Although not required, you are encouraged to consider development of replacement housing in locations other than the original severely distressed site (i.e., off-site housing). Locating off-site housing in neighborhoods with low levels of poverty and/or low concentrations of minorities will provide maximized housing alternatives for low-income residents who are currently on-site and assist the goal of creating desegregated, mixed-income communities. The effect on-site will be to assist in the deconcentration of low-income residents and increase the number of replacement units.

(2) Although it is acknowledged that off-site housing is not appropriate in some communities, if you do not propose to include off-site housing in your Revitalization Plan, you are not eligible to receive this Point.

(3) If you propose an off-site housing component in your application, you must be sure to include that component when you discuss other components (e.g. on-site housing, homeownership housing, etc.) Throughout your application, your unit counts and other numerical data must take into account the off-site component.

(4) *Threshold:* If you propose to develop off-site housing, you MUST provide evidence in your application that you (not your developer) have site control of the property. Evidence may include an option to purchase the property, contingent solely on the receipt in the HOPE VI grant, satisfactory compliance with the environmental review requirements of accordance with Section XX of this NOFA, and the site and neighborhood standards in Section XIII(C)(3) of this NOFA. If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application due date. *If you propose to develop off-site housing and you do not provide acceptable site control, your entire application will be ineligible for funding.*

(5) Rating: You will receive 1 Point if you propose to develop an off-site housing component and document that you have:

(a) Acquired the site; and

(b) The site meets all environmental, and site and neighborhood standards.

(C) *Threshold:* Market Rate Housing. If you include market rate housing in your Revitalization Plan, you must demonstrate that there is a demand for the housing units of the type, number, and size proposed in the location you have chosen. In your application you must provide a preliminary market assessment letter prepared by an independent, third party, credentialed market research firm or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units and any community facilities, economic development, and retail structures, based on the market and economic conditions of the project area. If, after the cure period, this letter is not included in your application, it will be ineligible for funding.

(D) Homeownership Housing—2 Points.

The Department has placed the highest priority on increasing homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families where English may be a second language. Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership.

(1) Your application will receive 2 Points if you propose and describe a feasible, well-defined plan for homeownership. In your application, you will describe:

(a) The purpose of your homeownership program;

(b) The number of units planned and their location(s);

(c) A description and justification of the families that will be targeted for the program;

(d) The proposed source of your construction and permanent financing of the units; and

(e) A description of the homeownership counseling you will provide to prospective families.

(2) You will receive 0 Points for this factor if you do not propose to include homeownership units in your Revitalization Plan, your proposed program is not feasible and/or well defined, or there is inadequate information in your application to rate this factor.

(E) *Threshold:* Zoning Approval. Your application must include a certification from the appropriate local official documenting that all required zoning approvals have been secured, both for on-site and off-site housing and other proposed uses, or that the request for such approval(s) are on the agenda for the next meeting of the appropriate zoning authority.

XV. Overall Quality of Plan

(A) *Threshold:* Appropriateness of Proposal. In accordance with Section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. You must briefly discuss other possible alternatives to your proposal, and explain why your plan is more appropriate. This is a statutory requirement and an application threshold. Any deficiencies in your narrative may not be corrected after the application is submitted.

Examples of alternative proposals may include:

(1) Rebuilding or rehabilitating an existing project or units at an off-site location that is in an isolated, non-residential, or otherwise inappropriate area;

(2) Proposing a range of incomes, housing types (rental, homeownership, market rate, public housing, townhouse, detached house, etc.), or costs which cannot be supported by a market analysis; and/or

(3) Proposing to use the land in a manner which is contrary to the goals of your agency.

(B) Rating Factor: Overall Quality of Plan—23 Points Total.

(1) Overall Quality of the Application—5 Points.

The information and strategies described in your application must be coherent and internally consistent. Numbers and statistics in your narratives must be consistent with the information provided in the attachments. Also, the physical and CSS aspects of the application must be compatible and coordinated with each other. Pay particular attention to the data provided for:

(a) Types and numbers of units;

(b) Budgets;

(c) Other financial estimates, including sources and uses; and

(d) Numbers of residents affected.

(2) Likelihood of Success—5 Points.

(a) You will receive 5 Points if your Revitalization Plan, including plans for retail, office, and other economic development activities, as appropriate, will:

(i) Result in a revitalized site that will enhance the neighborhood in which the project is located;

(ii) Spur outside investment into the surrounding community;

(iii) Enhance economic opportunities for residents; and

(iv) Remove an impediment to continued redevelopment or start a community-wide revitalization process.

(b) You will receive 3 Points if your application demonstrates that your Revitalization Plan will have only a moderate effect on activities in the surrounding community.

(c) You will receive 0 Points if your application does not demonstrate that your Revitalization Plan will have an effect on the surrounding community, or if there is inadequate information in your application to rate this factor.

(3) Project Readiness—7 Points.

HUD places top priority on projects that will be able to commence immediately after grant award. You will receive the following points for each applicable subfactor certified in your application.

(a) You will receive 2 Points if the targeted severely distressed public housing project is completely vacant.

(b) You will receive 2 Points if the site is cleared.

(c) You will receive 1 Point if a Master Development Agreement has been developed and is ready to submit to HUD.

(d) You will receive 1 Point if your preliminary site design is complete.

(e) You will receive 1 Point if you have held 5 or more public planning sessions leading to resident acceptance of the Plan.

(4) Design—3 Points.

HUD is seeking excellence in design. We urge you to carefully select your architects and/or planners, and to enlist local affiliates of national architectural and planning organizations such as the American Institute of Architects, the American Society of Landscape Architects, the American Planning Association, the Congress for the New Urbanism, and/or the department of architecture at a local college or university to assist you in assessing qualifications of design professionals and/or participating on a selection panel that results in the procurement of excellent design services.

HUD encourages you to select a design team that is committed to a process in which residents, including young people and seniors, the broader community, and other stakeholders participate in designing the new community.

Your proposed site plan, new units, and other buildings must be designed to be compatible with and enrich the surrounding neighborhood. Local architecture and design elements and amenities should be incorporated into the new or rehabilitated homes so that the revitalized sites and structures will blend into the broader community and appeal to the market segments for which they are intended. Housing, community facilities, and economic development space must be well integrated. You must select members of your Team who have the ability to meet these requirements.

(a) You will receive 3 Points if your proposed site plan, new dwelling units, and buildings demonstrate that:

(i) You have proposed a site plan that is compact, pedestrian-friendly, with an interconnected network of streets and public open space;

(ii) Your proposed housing, community facilities, and economic development facilities are thoroughly integrated into the community through the use of local architectural tradition, building scale, grouping of buildings, and design elements; and

(iii) Your plan proposes appropriate enhancements of the natural environment.

(b) You will receive 1 Point if your proposed site plan, new dwelling units, and buildings demonstrate design that adequately addresses the elements above.

(c) You will receive 0 Points if your proposed design is perfunctory or otherwise does not address the above elements. You will also receive 0 Points if there is inadequate information in the application to rate this factor.

(5) Evaluation—3 Points.

You are encouraged to work with your local university(ies), other institutions of learning, foundations, and/or others to evaluate the performance and impact of their HOPE VI Revitalization Plan over the life of the grant. The proposed methodology must measure success against goals you set at the outset of your revitalization activities. Evaluators must establish baselines and provide ongoing interim reports that will allow you to make changes as necessary as your project proceeds. Where possible, you are encouraged to form partnerships with Historically Black Colleges and Universities (HBCUs); Hispanic-Serving Institutions (HBIs); Community Outreach Partnership Centers (COPCs); the Alaskan Native/Native Hawaiian Institution Assisting Communities Program (as appropriate); and others in HUD's University Partnerships Program.

(a) You will receive 3 Points if your application includes a letter(s) from an institution(s) of higher learning that provides a commitment to work with you to evaluate your program and describes its proposed approach to carry out the evaluation if your application is selected for funding. The letter must provide the extent of the commitment and involvement, the extent to which you and the local institution of higher learning will cooperate, and the proposed approach. The commitment letter must address the following areas for evaluation:

(i) The impact of your HOPE VI effort on the lives of the residents;

(ii) The nature and extent of economic development generated in the community;

(iii) The effect of the revitalization effort on the surrounding community, including spillover revitalization activities, property values, etc.; and

(iv) Your success at integrating the physical and CSS aspects of your strategy.

(b) You will receive 0 Points if your application does not include a commitment letter that conforms to the specifications in paragraph (b) above.

XVI. Application Requirements

(A) Application Components.

(1) Narrative Exhibits.

(a) The first part of your application will be comprised of narrative exhibits. Your narratives will respond to each rating factor in the NOFA, and will also respond to threshold requirements. Among other things, your narratives must describe your overall planning activities, including but not limited to relocation, community and supportive services, and development issues.

(b) Each HOPE VI Revitalization application must contain no more than 125 pages of narrative exhibits. Any pages after the first 125 pages of narrative exhibits will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 125 page limit.

(2) Attachments.

(a) The second part of your application will be comprised of Attachments. These documents will also respond to the rating factors in the NOFA, as well as threshold requirements. They will include documents such as maps, photographs, letters of commitment, application data forms, and various certifications unique to HOPE VI Revitalization.

(b) Each HOPE VI Revitalization application must contain no more than 150 pages of attachments. Any pages after the first 150 pages of attachments will not be considered. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(3) Exceptions to Page Limits. The documents listed below constitute the only exceptions and are not counted in the page limits listed in Sections (1)(b) and (2)(b) above:

(a) Additional pages submitted at the request of HUD in response to a technical deficiency.

(b) Attachments that provide documentation of commitments from resource providers or CSS providers.

(c) Narratives and Attachments required to be submitted only by existing HOPE VI Revitalization Grantees in accordance with Sections VII(A)(3), VII(B)(2), and VII(B)(3)(c) of this NOFA (Capacity).

(d) Information required of MTW applicants only.

(4) Standard Certifications. The last part of your application will be comprised of standard certifications common to many HUD programs. Hard copies of the forms are included in the HOPE VI Application Kit, and electronic versions of these forms also can be found on the websites listed in Section IV(D)(2) of this NOFA. If you are requesting Section 8 assistance as described in Section II(E) of this NOFA, it must be placed in this Standard Certifications Section of your HOPE VI application. These forms must be placed at the back of the application, except for the Application for Federal Assistance (SF–424), which is the first page of your application.

(B) Application Format. To speed the processing of your application, you are asked to follow these instructions when preparing your application:

(1) Double space your narrative pages. Single spaced pages will be counted as two pages.

(2) Use 8½ x 11 inch paper, one side only. Only the City map may be submitted on an 8½ by 14 sheet of paper. Larger pages will be counted as two pages.

(3) All margins should be 1 inch, but no smaller than ½ inch.

(4) Use at least an 11 Point font.

(5) Any pages marked with numbers and letters (e.g., 75A, 75B, 75C) will be treated as separate pages.

(6) If a Section is not applicable, omit it; do not insert a page marked n/a.

(7) Mark each Exhibit and Attachment with an appropriate tab. No material on the tab will be considered for review purposes, although pictures are allowed.

(8) No more than one page of text may be placed on one sheet of paper; i.e., you may not shrink pages to get two or more on a page.

(9) Do not format your narrative in columns. Pages with text in columns will be counted as two pages.

(C) Signatures. Unless otherwise indicated, each form or certification, whether part of an Attachment or a Standard Certification, must be signed by the Executive Director of the applicant PHA, or his or her designate. Signatures need not be original.

XVII. Revitalization Application Selection Process

(A) Revitalization Grant Application Evaluation.

(1) HUD's selection process is designed to ensure that HOPE VI Revitalization grants are awarded to eligible PHAs with the most meritorious applications.

(2) In a departure from recent years, HUD will only rate HOPE VI Revitalization applications that have met the thresholds described in this HOPE VI NOFA.

(B) Threshold and Completeness Review.

(1) Application Screening. HUD will screen each application to determine if it meets the threshold criteria listed in Section III of this NOFA.

(2) HUD will consider the information you submit by the application due date. After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide.

(3) In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application on a uniform basis for all applicants. After your application has been screened, HUD may contact you to clarify an item in your application or to give you an opportunity to correct a technical deficiency. HUD may not seek clarification of items or responses that would improve the substantive quality of your response to any rating factor. Examples of curable technical deficiencies include your failure to include a required certification or sign a document. If HUD identifies a technical deficiency, it will notify you by fax of the clarification or deficiency. You must submit information to cure the deficiency to HUD within 14 calendar days from the date of HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the following business day.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

(4) In order to evaluate thresholds, HUD may also use internal information sources that will provide information regarding audit findings, the status of existing HOPE VI Revitalization grants, and other pertinent information. HUD will not consider external sources such as newspaper articles and letters to evaluate applications unless they are submitted in your application.

(5) Applications that do not meet every threshold will be deemed ineligible for funding and will not be rated.

(C) Preliminary Rating and Ranking.

(1) Rating.

(a) HUD will preliminarily rate each eligible application, SOLELY on the basis of the rating factors described in this HOPE VI NOFA.

(b) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(c) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(d) The maximum number of Points for each Revitalization application is 114.

(2) Ranking.

(a) After preliminary review, applications will be ranked in score order.

(b) Applications will be deemed "competitive" if they have a preliminary score of 90 or above.

(c) Applications that do not have a preliminary score of at least 90 will not receive a final score and will not be eligible for funding.

(D) Final Panel Review.

(1) A Final Review Panel made up of HUD staff will:

(a) Assess each competitive application, as defined in Section XVII(C) above;

(b) Assign the final score; and

(c) Recommend for selection the most highly-rated competitive applications, subject to the amount of available funding, in accordance with the allocation of funds described in Section II of this NOFA.

(2) HUD reserves the right to make reductions in funding to delete ineligible items, with the exception of the prohibition to request funds for units that do not meet the requirements of replacement housing, in accordance with Section VI(D)(8) of this NOFA.

(3) In accordance with the FY 2002 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

(E) Tie Scores. If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for Rating Factor XV, Overall Quality of the Plan. If a tie still remains, HUD will select for funding the application(s) with the highest score for Capacity. HUD will select further tied applications with the highest score for Need.

(F) Transfer to Demolition Grants. If funds remain after all eligible HOPE VI Revitalization grant applications are funded and the amount remaining is inadequate to feasibly fund the next eligible Revitalization application, HUD reserves the right to:

(1) Reallocate unused funds to fund or supplement the next eligible HOPE VI Demolition grant application(s);

(2) Reallocate unused funds to the amount available for Section 8 assistance, if necessary; and/or

(3) Carry over unused funds to the next fiscal year.

XVIII. Post Award Activities

(A) Notification of Funding Decisions. The HUD Reform Act prohibits HUD from notifying you as to whether or not you have been selected to receive a Revitalization grant until it has announced all HOPE VI Revitalization grant recipients. If your Revitalization application has been found to be ineligible or if it did not receive enough Points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all HOPE VI applicants, whether or not they have been selected for funding.

(B) Environmental Review. HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released until the responsible entity completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with Section XX of this NOFA.

(C) Revitalization Grant Agreement. When you are selected to receive a Revitalization grant, HUD will send you a HOPE VI Revitalization Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing revitalization activities. Both you and HUD will sign the cover sheet of the Grant Agreement. It is effective on the date of HUD's signature. The Grant

Agreement differs from year to year. The FY 2001 Revitalization Grant Agreement can be found on the HOPE VI website at *www.hud.gov/hopevi.*

(D) HOPE VI Endowment Trust Addendum to the Grant Agreement. This document must be executed between the Grantee and HUD in order for the Grantee to use CSS funds in accordance with Section XI(A)(3) of this NOFA.

(E) Revitalization Plan. After HUD conducts a post-award review of your application and makes a visit to the site, you will be required to submit components of your Revitalization Plan to HUD, as provided in the HOPE VI Revitalization Grant Agreement. These components include, but are not limited to:

(1) Supplemental Submissions, including a HOPE VI Program Budget;

(2) A Community and Supportive Services work plan, in accordance with guidance provided by HUD;

(3) A standard or mixed-finance development proposal, as applicable;

(4) A demolition and/or disposition application, as applicable; and

(5) A homeownership proposal, as applicable.

XIX. Post Award Requirements

(A) Quarterly Report. If you are selected for funding, you must submit a Quarterly Report to HUD.

(1) HUD will provide training and technical assistance on the filing and submitting of Quarterly Reports.

(2) Filing of Quarterly Reports is mandatory for all Grantees, and failure to do so within the required time frame will result in suspension of grant funds until the report is filed and approved by HUD.

(3) Grantees will be held to the milestones that are reported on the Quarterly Report Administrative and Compliance CheckPoints Report, as approved by HUD.

(4) Grantees must also report obligations and expenditures in LOCCS on a quarterly basis.

(B) Timeliness of Construction. Grantees must proceed within a reasonable time frame, as indicated below. In determining reasonableness of such time frame, HUD will take into consideration those delays caused by factors beyond your control.

(1) Grantees must submit Supplemental Submissions within 90 days from the date of HUD's written request.

(2) Grantees must submit CSS work plans within 90 days from the execution of the Grant Agreement.

(3) All other required components of the Revitalization Plan and any other submissions not mentioned above must be submitted in accordance with the Quarterly Report Administrative and Compliance CheckPoints Report, as approved by HUD.

(4) Grantees must start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

(5) Grantees must submit the development proposal for the first phase of construction within 12 months of grant award.

(6) The closing of the first phase must take place within 15 months of grant award.

(7) Grantees must complete construction within 48 months from the date of HUD's approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

(8) In accordance with Section 24(i) of the 1937 Act, if a Grantee does not proceed within a reasonable time frame, as described in Sections (B)(1) through (7) above, HUD shall withdraw any unobligated grant amounts. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Revitalization Plan of the original Grantee.

(C) Conflict of Interest.

(1) Prohibition. In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a Grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI Grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(2) HUD-Approved Exception.

(a) Standard. HUD may grant an exception to the prohibition in Section (1) above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(b) Procedure. HUD will consider granting an exception only after the Grantee has provided a disclosure of the nature of the conflict, accompanied by:

(i) An assurance that there has been public disclosure of the conflict;

(ii) A description of how the public disclosure was made; and

(iii) An opinion of the Grantee's attorney that the interest for which the exception is sought does not violate State or local laws.

(c) Consideration of Relevant Factors. In determining whether to grant a requested exception under Section (b) above, HUD will consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization Plan that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization Plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in Section (iii) above;

(vi) Whether undue hardship will result either to the Grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(D) OMB Circulars and Administrative Requirements. You must comply with the following administrative requirements related to the expenditure of Federal funds. OMB Circulars can be found at *www.whitehouse.gov/omb/circulars/index.html.* The Code of Federal Regulations can be found at *www.access.gpo.gov/nara/cfr/index.html.*

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local and Indian Tribal Governments);

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to non-profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) OMB Circular A–122 (Cost Principles for Non-Profit Organizations):

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures);

(c) 24 CFR 84.26 (audit requirements).

(E) Building Standards.

(1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. You are encouraged to read the policy statement and Final Report of the HUD Review of Model Building Codes that identifies the variances between the design and construction requirements of the Fair Housing Act and several model building codes. That report can be found on the HUD website at *www.hud.gov/fhe/modelcodes*.

(2) Deconstruction. HUD encourages you to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or ''deconstruction'' of public housing units, recycling demolition debris, and reusing salvage materials in new construction. ''A Guide to Deconstruction'' can be found at *www.hud.gov/deconstr.pdf*.

(3) PATH. HUD encourages you to use PATH technologies in the construction and delivery of replacement housing. PATH (Partnership for Advancing Technology in Housing) is a voluntary initiative that seeks to accelerate the creation and widespread use of advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our Nation's housing.

(a) PATH's goal is to achieve dramatic improvement in the quality of American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;

(ii) Improving durability;

(iii) Increasing energy efficiency;

(iv) Improving disaster resistance; and

(v) Reducing environmental impact.

(c) More information, the list of technologies, latest PATH Newsletter, results from field demonstrations and PATH projects can be found at *www.pathnet.org*.

(4) Energy Efficiency.

(a) New construction must comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

(b) HUD encourages you to set higher standards for energy and water efficiency in HOPE VI new construction, which can achieve utility savings of 30 to 50 percent with minimal extra cost.

(c) You are encouraged to negotiate with your local utility company to obtain a lower rate. Utility rates and tax laws vary widely throughout the country. In some areas, PHAs are exempt or partially exempt from utility rate taxes. Some PHAs have paid unnecessarily high utility rates because they were billed at an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) You must use new technologies that will conserve energy and decrease operating costs where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;

(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;

(iii) Photovoltaics (technologies that convert light into electrical power);

(iv) Extra insulation;

(v) Smart windows; and

(vi) Energy Star appliances.

(f) HUD's Energy website is located at *http://www.hudstage.hud.gov/offices/cpd/energyenviron/energy/index.cfm*.

(5) Lead-Based Paint. You must comply with lead-based paint testing and abatement requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You must also comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for testing and abatement activities. The National Lead Information Hotline is 1–800–424–5323.

(F) Labor Standards.

(1) Revitalization Grant Labor Standards.

(a) Davis-Bacon wage rates apply to development of any public housing rental units or homeownership units developed with HOPE VI grant funds and to demolition followed by construction on the site. Davis-Bacon rates are ''prevailing'' minimum wage rates set by the Secretary of Labor that all laborers and mechanics employed in the development, including rehabilitation other than nonroutine maintenance of a public housing project must be paid, as set forth in a wage determination that must be obtained by the PHA prior to bidding on each construction contract. The wage determination and provisions requiring payment of these wage rates must be included in the construction contract.

(b) HUD-determined wage rates apply to:

(i) Operation (including nonroutine maintenance) of revitalized housing, and

(ii) Demolition followed only by filling in the site and establishing a lawn.

(2) Exclusions. Under Section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(3) If other Federal programs are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other Federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

(G) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any Federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, email and web pages) facsimile machines, copiers and telephones. When developing, procuring, maintaining or using EIT, grantees must ensure that the EIT allows:

(1) Employees with disabilities to have access to and use information and data that is comparable to the access and use of data by employees who do not have disabilities; and

(2) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data and comparable to the access and use of data by members of the public who do not have disabilities.

If these standards impose on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

XX. Environmental Requirements

(A) Environmental Review.

(1) If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity, as defined in 24 CFR 58.2(a)(7), must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

(2) If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the American Society for Testing and Material (ASTM) Standards E 1527–97, as amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(3) You may not undertake any actions with respect to the project, or with respect to any off-site replacement public housing, that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds (RROF) following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50.

(4) If the environmental review is completed before HUD approval of the HOPE VI Supplemental Submissions and you have submitted your RROF, the Supplemental Submissions approval letter shall state any conditions, modifications, prohibitions, etc. as a result of the environmental review, including the need for any further environmental review. You must carry out any mitigating/remedial measures required by HUD, or select an alternate eligible property, if permitted by HUD. If the remediation plan is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(5) If the environmental review is not completed and/or you have not submitted the RROF before HUD approval of the Supplemental Submissions, the letter approving the Supplemental Submissions will instruct you to refrain from undertaking, obligating or expending funds on physical activities or other choice-limiting actions, until HUD approves your RROF and the related certification of the responsible entity (or HUD has completed the environmental review). The Supplemental Submissions approval letter also will advise you that the approved Supplemental Submissions may be modified on the basis of the results of the environmental review.

(6) The costs of environmental reviews and hazard remediation are eligible costs under the HOPE VI Program.

(7) HUD's Environmental website is located at *http://hudstage.hud.gov/offices/cpd/energyenviron/environment/index.cfm*.

(B) There must not be any environmental or public policy factors such as sewer moratoriums that would preclude development in the requested locality. Applicants will certify to this when signing the HOPE VI Revitalization Grant Application Certifications.

(C) Flood Insurance. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

(D) Coastal Barrier Resources Act. In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

XXI. Findings and Certifications

(A) *The Catalog of Federal Assistance* (CFDA) Number for HOPE VI is 14.866. The CFDA is a government-wide compendium of Federal programs, projects, services, and activities that provide assistance or benefits to the public.

(B) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

(C) *Federalism.* Executive Order 13132 prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of Section 6 of the Executive Order are met. This NOFA does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(D) *Intergovernmental Review of Federal Programs.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen Federalism by relying on State and local processes for the coordination and review of Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform a State review function. The official listing of State Points of Contact (SPOC) for this review process can be found at: *www.whitehouse.gov/omb/grants/spoc.html*. States that are not listed on the website have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of those States, you may send applications directly to HUD. If your State has a SPOC, you should contact them to see if they are interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your application.

(E) *Prohibition Against Lobbying Activities.* You are subject to the provisions of Section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities'' (SF LLL) any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. SF LLL is included in the HOPE VI Revitalization Application Kit and the websites listed in Section (IV)(D)(2) of this NOFA. The Lobbying Disclosure Act of 1995 (Pub. L. 104–65), approved December 19, 1995, repealed Section 112 of the HUD Reform Act, and requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

(F) *Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available for public inspection all HOPE VI grant applications for five years beginning not less than 30 days following the grant award. Applications will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to Section 102(a) of the HUD Reform Act, and/or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(G) *Section 103 HUD Reform Act.* HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition +should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or HUD employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(H) *Paperwork Reduction Act Statement.* The information collection requirements contained in this notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and assigned OMB control number 2577–0208. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: July 24, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

Appendix A—HOPE VI Revitalization Grant Applicant Certifications

Acting on behalf of the Board of Commissioners of the Housing Authority listed below, as its Chairman, I approve the submission of the HOPE VI Revitalization application of which this document is a part and make the following certifications to and agreements with the Department of Housing and Urban Development (HUD) in connection with the application and implementation thereof:

1. The public housing project or building in a project targeted in this HOPE VI Revitalization grant application meets the definition of severe distress in accordance with Section 24(j)(2) of the United States Housing Act of 1937 (''1937Act'').

2. The PHA has not received assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities for which funding is requested in the HOPE VI Revitalization application.

3. The PHA does not have any litigation pending which would preclude timely startup of activities.

4. The PHA is in full compliance with any desegregation or other court order related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973) that affects the PHA's public housing program and that is in effect on the date of application submission.

5. The PHA has returned any excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), or that HUD has approved a pay-back plan.

6. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

7. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the property targeted for acquisition or construction (including rehabilitation) is not located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

8. The application does not target properties in the Coastal Barrier Resources System, in accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501). If selected for HOPE VI Revitalization funding:

9. The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the HOPE VI Program, including the implementation of HOPE VI revitalization activities, in a timely, efficient, and economical manner.

10. The PHA will not receive assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities funded by the HOPE VI Revitalization grant. The PHA has established controls to ensure that any activity funded by the HOPE VI Revitalization grant is not also funded by any other HUD program, thereby preventing duplicate funding of any activity.

11. The PHA will not provide to any development more assistance under the HOPE VI Revitalization grant than is necessary to provide affordable housing after taking into account other governmental assistance provided.

12. The PHA will supplement the aggregate amount of the HOPE VI Revitalization grant with funds from sources other than HOPE VI in an amount not less than 5 percent of the amount of HOPE VI grant.

13. In addition to supplemental amounts provided in accordance with Certification 12 above, if the PHA uses more than 5 percent of the HOPE VI grant for the community and supportive services component, it will provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant used for the community and supportive services component.

14. Disposition activity under the grant will be conducted in accordance with Section 18 of the 1937 Act.

15. The PHA will carry out acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941, or successor part.

16. The PHA will carry out major rehabilitation and other physical improvements of housing and non-dwelling facilities in accordance with 24 CFR 968.11 2(b), (d), (e), and (g)–(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d) or successor part.

17. The PHA will carry out construction of public housing rental replacement housing, both on-site and off-site, and community facilities, in accordance with 24 CFR part 941 or successor part, including mixed-finance development in accordance with subpart F.

18. The PHA will carry out replacement homeownership activities in conformance with the requirements of section 24(d)(1)(J), which may include a homeownership proposal under Section 32 of the 1937 Act, the income limitations, and other applicable homeownership requirements of the 1937 Act.

19. The PHA will administer and operate public housing rental units in accordance with all requirements applicable to public housing, including the 1937 Act, HUD's implementing regulations thereunder, the ACC, the Mixed-Finance ACC Amendment (if applicable), and all other applicable Federal statutory, Executive Order, and regulatory requirements as such requirements may be amended from time to time.

20. The PHA will comply with:

(a) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100;

(b) The prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8);

(c) Title II of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and its implementing regulations at 28 CFR part 36;

(d) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations at 24 CFR part 40).

21. The PHA will comply with regulations at 24 CFR 85.36(e) which require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms are used when possible.

22. The PHA will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135, including the reporting requirements of subpart E.

23. The PHA will comply with Davis-Bacon or HUD-determined prevailing wage rate requirements to the extent required under Section 12 of the 1937 Act.

24. As applicable, the PHA will comply with the relocation assistance and real property acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24; relocation regulations at 24 CFR 968.108 or successor regulation (rehabilitation, temporary relocation); 24 CFR 941.207 or successor regulation (acquisition); and Section 18 of the 1937 Act as amended (disposition).

25. The PHA will comply with all HOPE VI requirements for reporting and providing access to records.

26. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is subject to 24 CFR part 35 and 24 CFR 965.701, as they may be amended from time to time, and Section 968.110(k) or successor regulation.

27. The PHA will comply with the policies, guidelines, and requirements of OMB Circular A–87 (Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments).

28. The PHA will comply with 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

29. The PHA will keep records in accordance with 24 CFR 85.20 that facilitate an effective audit to determine compliance with program requirements, and comply with the audit requirements of 24 CFR 85.26.

30. The PHA will start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

31. The PHA will submit the development proposal for the first phase of construction within 12 months of grant award.

32. The PHA will complete construction within 48 months from the date of HUD's approval of the Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

33. All activities that include construction, rehabilitation, lead-based paint removal, and related activities will meet or exceed local building codes. New construction will comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

[FR Doc. 02–19276 Filed 7–30–02; 8:45 am]
BILLING CODE 4210–33–P

Federal Register

Wednesday,
July 31, 2002

Part IV

Department of Housing and Urban Development

24 CFR Part 3280

Manufactured Home Construction and Safety Standards: Smoke Alarms; Amendments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–4552–C–03]

RIN 2502–AH48

Manufactured Home Construction and Safety Standards: Smoke Alarms; Amendments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule; amendments.

SUMMARY: This document makes certain amendments to the final rule that was recently published in the **Federal Register** that revised the Federal Manufactured Home Construction and Safety Standards requirements for the location and placement of smoke alarms. The amendments are made to correct certain technical errors and to include an omission, referenced in the preamble, but not included in the regulatory text.

EFFECTIVE DATE: September 16, 2002.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–6401 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 19, 2002, the Department published a final rule in the **Federal Register** (67 FR 12812) to amend the Federal Manufactured Home Construction and Safety Standards to revise the requirements for location and placement of smoke alarms. The final rule stated that ''The amendments will improve the effectiveness and performance of smoke alarms in early warning detection of manufactured home fires and, as a result, reduce the rate of fire fatalities in new manufactured housing.'' (67 FR 12812). Since publication of the final rule, HUD has discovered the following errors and omission in the regulations that this document remedies:

In §§ 3280.208(c)(1), (c)(2), and (c)(3), language was omitted that described the minimum slope of sloping ceilings. This document remedies that omission, along with making other corrections to paragraphs (c)(2) and (c)(3). The corrected paragraphs are set forth below.

—Paragraph (c)(1) now reads as follows:

(c) Mounting requirements. (1) Except in rooms with peaked sloping or shed sloping ceilings with a slope of more than 1.5/12 or as permitted pursuant to paragraph (e) of this section, smoke alarms must be mounted either: * * *

—In § 3280.208(c)(2), the second reference to a horizontal measurement is incorrect; the reference should be to a vertical measurement. This is consistent with the method for determining the comparable measurement set out for non-sloped ceilings. As corrected, paragraph (c)(2) now reads as follows:

(2) Except as permitted pursuant to paragraph (e) of this section, in rooms with peaked sloping ceilings with a slope of more than 1.5/12, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, from the peak of the ceiling; at least 4 inches, measured vertically, below the peak of the ceiling; and at least 4 inches from any projecting structural element.

In § 3280.208(c)(3), the phrase ''on the ceiling'' and the method of measurement were inadvertently omitted. The preamble of the final rule indicated that specification of locations for smoke alarms on peaked sloping or shed sloping ceilings is important for proper operation of the alarms. (See 67 FR 12813 and 12815.) Additionally, the preambles of both the proposed and final rules stated that the Department's rule was largely based on the provisions of the National Fire Protection Association 501 Standard. (See, respectively 65 FR 31778 and 67 FR 12813 and 12815.) With the inclusion of this language, which is consistent with the proposed rule, paragraph (c)(3) now reads as follows:

(3) Except as permitted pursuant to paragraph (e) of this section, in rooms with shed sloping ceilings with a slope of more than 1.5/12, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, of the high side of the ceiling, and not closer than 4 inches from any adjoining wall surface and from any projecting structural element.

Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary or contrary to the public interest.''

The Department finds that good cause exists to publish this rule for effect without soliciting public comment in that prior public procedure is contrary to the public interest. This final rule corrects technical errors and includes language discussed in the preamble of the proposed rule but inadvertently omitted from the regulatory text.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is limited to addressing technical errors and omissions.

Environmental Impact

This rule does not involve a development decision that affects the physical condition of specific project areas or building sites. Accordingly, under HUD's regulations in 24 CFR part 50, this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 3280 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for 24 CFR part 3280 continues as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

2. Section 3280.208 is amended by revising paragraphs (c)(1) introductory text, (c)(2) and (c)(3) to read as follows:

§ 3280.208 Smoke alarm requirements.

* * * * *

(c) *Mounting requirements.* (1) Except in rooms with peaked sloping or shed sloping ceilings with a slope of more than 1.5/12 or as permitted pursuant to paragraph (e) of this section, smoke alarms must be mounted either:

* * * * *

(2) Except as permitted pursuant to paragraph (e) of this section, in rooms with peaked sloping ceilings with a slope of more than 1.5/12, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, from the peak of the ceiling; at least 4 inches, measured vertically, below the peak of the ceiling; and at least 4 inches from any projecting structural element.

(3) Except as permitted pursuant to paragraph (e) of this section, in rooms with shed sloping ceilings with a slope of more than 1.5/12, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, of the high side of the ceiling, and not closer than 4 inches from any adjoining wall surface and from any projecting structural element.

* * * * *

Dated: July 24, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–19247 Filed 7–30–02; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,

July 31, 2002

Part V

Department of Health and Human Services

Centers for Medicare and Medicaid Services

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1202–N]

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2003, as required by statute. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA), relating to Medicare payments and consolidated billing for SNFs.

EFFECTIVE DATE: This notice is effective on October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Dana Burley, (410) 786–4547 (for information related to the case-mix classification methodology).

John Davis, (410) 786–0008 (for information related to the Wage Index).

Sheila Lambowitz, (410) 786–7605 (for information related to swing-bed providers).

Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION: Because of the many terms to which we refer by abbreviation in this notice, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL—Activity of Daily Living
AHE—Average Hourly Earnings
ARD—Assessment Reference Date
BBA—Balanced Budget Act of 1997, Pub.L. 105–33
BBRA—Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub.L. 106–113
BEA—(U.S.) Bureau of Economic Analysis
BIPA—Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub.L. 106–554
CAH—Critical Access Hospital
CFR—Code of Federal Regulations
CMS—Centers for Medicare & Medicaid Services
CPT—(Physicians') Current Procedural Terminology
DRG—Diagnosis Related Group
FI—Fiscal Intermediary
FR—Federal Register
FY—Fiscal Year
GAO—General Accounting Office
HCPCS—Healthcare Common Procedure Coding System
ICD–9–CM—International Classification of Diseases, Ninth Edition, Clinical Modification
IFC—Interim Final Rule with Comment Period
MDS—Minimum Data Set
MEDPAR—Medicare Provider Analysis and Review File
MIP—Medicare Integrity Program
MSA—Metropolitan Statistical Area
NECMA—New England County Metropolitan Area
OIG—Office of the Inspector General
OMRA—Other Medicare Required Assessment
PCE—Personal Care Expenditures
PPI—Producer Price Index
PPS—Prospective Payment System
PRM—Provider Reimbursement Manual
RAI—Resident Assessment Instrument
RAP—Resident Assessment Protocol
RAVEN—Resident Assessment Validation Entry
RFA—Regulatory Flexibility Act, Pub.L. 96–354
RIA—Regulatory Impact Analysis
RUG—Resource Utilization Groups
SCHIP—State Children's Health Insurance Program
SNF—Skilled Nursing Facility
STM—Staff Time Measure
UMRA—Unfunded Mandates Reform Act, Pub.L. 104–4

I. Background

On July 31, 2001, we published in the **Federal Register** (66 FR 39562) a final rule that set forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2002. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this notice, we are updating the per diem payment rates for SNFs, for FY 2003. Major elements of the SNF PPS include:

- *Rates.* Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. The rates were adjusted annually using a SNF market basket index. Rates were case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG-III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The rates were also adjusted by the hospital wage index to account for geographic variation in wages. (In section II.C of this notice, we discuss the wage index adjustment in detail.) A correction notice was published on March 22, 2002 (67 FR 13278) that announced corrections to several of the wage factors. Additionally, as noted in the July 31, 2001 final rule (66 FR 39562), section 101 of the BBRA and sections 311, 312, and 314 of the BIPA also affect the payment rate.
- *Transition.* The SNF PPS included an initial 3-year, phased transition that blended a facility-specific payment rate with the Federal case-mix adjusted rate. For each cost reporting period after a facility migrated to the new system, the facility-specific portion of the blend decreased and the Federal portion increased in 25 percentage point increments. For most facilities, the facility-specific rate was based on allowable costs from FY 1995; however, since the last year of the transition was FY 2001, all facilities were paid at the full Federal rate by the following fiscal year (FY 2002). Therefore, we are no longer including adjustment factors related to facility-specific rates for the coming fiscal year.
- *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage; however, because RUG-III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities. We discuss this coordination in greater detail in section II.E of this notice.
- *Consolidated Billing.* The SNF PPS includes a consolidated billing provision (described in greater detail in

section IV of this notice) that requires a SNF to submit consolidated Medicare bills for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, this provision places with the SNF the Medicare billing responsibility for physical, occupational, and speech-language therapy that the resident receives during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners).

• *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. Part A currently pays for SNF services furnished by swing-bed hospitals on a cost-related basis. Section 1888(e)(7) of the Act requires the SNF PPS to encompass these services no earlier than cost reporting periods beginning on July 1, 1999, and no later than the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. A more detailed discussion of this provision appears in section V of this notice.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.
2. The case-mix classification system to be applied with respect to these services during the FY.
3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure (see section II.E of this notice).

This notice provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101(a) of the BBRA provided for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). Under the statute, this temporary increase remains in effect until the later of October 1, 2000, or the implementation of case-mix refinements in the PPS. Section 101(d) included a 4 percent across-the-board increase in the adjusted Federal per diem payment rates each year for FYs 2001 and 2002, exclusive of the 20 percent increase.

We included further information on all of the provisions of the BBRA that affect the SNF PPS in Program Memorandums A–99–53 and A–99–61 (December 1999), and Program Memorandum AB–00–18 (March 2000). In addition, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the July 31, 2001 final rule (66 FR 39562), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA also included several provisions that resulted in adjustments to the PPS for SNFs. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2001 (66 FR 39562), as follows:

• Section 203 of the BIPA exempted critical access hospital (CAH) swing-beds from the SNF PPS; we included further information on this provision in Program Memorandum A–01–09 (January 16, 2001).

• Section 311 of the BIPA eliminated the one percentage point reduction in the SNF market basket that the statutory update formula had previously specified for FY 2001, changed the one percentage point reduction specified for FY 2002 to a 0.5 percentage point reduction, and established an update factor for FY 2003 of market basket minus 0.5 percentage point. This section also required us to conduct a study of alternative case-mix classification systems for the SNF PPS, and to submit a report to the Congress by January 1, 2005.

• Section 312 of the BIPA provided for a temporary 16.66 percent increase in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002. This section also required the General Accounting Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued.

• Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001.

• Section 314 of the BIPA adjusted the payment rates for all of the rehabilitation RUGs to correct an anomaly under which the existing payment rates for the RHC, RMC, and RMB rehabilitation groups were higher than the rates for some other, more intensive rehabilitation RUGs.

• Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes.

We included further information on several of these provisions in Program Memorandum A–01–08 (January 16, 2001).

E. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. Providers that received new provider exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates, as well as costs related to payments for exceptions to the routine cost limits. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. This classification system, Resource Utilization Groups, version III (RUG–III), uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 44 RUG III groups. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the RUG–III classification system.

The Federal rates in this notice reflect an update to the rates that we published in the July 31, 2001 **Federal Register** (66 FR 39562) equal to the SNF market basket index minus 0.5 percentage point, as well as the expiration of the temporary 16.66 percent adjustment to the nursing component of the rates enacted in section 312 of the BIPA. According to section 311 of the BIPA, for FY 2003, we are updating the rate by adjusting the current rates by the SNF market basket index minus 0.5 percentage point.

2. Payment Provisions—Initial Transition Period

The SNF PPS included an initial, phased transition from a facility-specific rate (which reflected the individual facility's historical cost experience) to the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Accordingly, starting with cost reporting periods beginning in FY 2002, we base payments entirely on the Federal rates and, as mentioned previously in this notice, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

F. Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered SNF services. The SNF market basket index is used to update the Federal rates on an annual basis. As mentioned previously in this notice, the final rule published on July 31, 2001 (66 FR 39562) revised and rebased the market basket to reflect 1997 total cost data.

II. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This notice sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2002. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related costs) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97)).

2. Methodology Used for the Calculation of the Federal Rates

The FY 2003 rates reflect an update using the latest market basket index minus 0.5 percentage point. The FY 2003 market basket increase factor is 3.1 percentage points, and subtracting 0.5 percentage point yields an update increase of 2.6 percentage points. For a complete description of the multi-step process, see the May 12, 1998 interim final rule (63 FR 26252). We note that, in accordance with the statute, the 4 percent across-the-board increase in the adjusted Federal per diem payment rates that section 101(d) of the BBRA provided for FYs 2001 and 2002 will expire at the end of FY 2002. Similarly, section 312 of the BIPA provides that the temporary 16.66 percent increase in the nursing component of the case-mix adjusted Federal rate will end effective with services furnished on or after October 1, 2002. Further, several other provisions of the BIPA affect the payment rates for SNFs, as described in the previous section.

We used the SNF market basket index (minus 0.5 percentage point) to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal fiscal year beginning October 1, 2001, and ending September 30, 2002, and the midpoint of the Federal fiscal year beginning October 1, 2002, and ending September 30, 2003, to which the payment rates apply. The rates are further adjusted by a wage index budget neutrality factor, described later in this section. Tables 1 and 2 reflect the updated components of the unadjusted Federal rates.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per diem amount	$121.59	$91.58	$12.06	$62.05

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per diem amount	$116.17	$105.61	$12.88	$63.20

B. Case-Mix Refinements

Under the BBA, we must publish the SNF PPS case-mix classification methodology applicable for the next Federal FY before August 1 of each year. For the reasons discussed below, in this notice we continue to utilize the existing case-mix classification methodology that employs the 44-group RUG–III classification system.

As discussed previously in this preamble, section 101(a) of the BBRA provided for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups. This legislation specified that the 20 percent increase would be effective for SNF services furnished on or after April 1, 2000, and would continue until the later of: (1) October 1, 2000, or (2) implementation of a refined case-mix classification system under section 1888(e)(4)(G)(i) of the Act that would better account for medically complex patients.

In the SNF PPS proposed rule for FY 2001 (65 FR 19190, April 10, 2000), we proposed making an extensive, comprehensive set of refinements to the existing case-mix classification system that collectively would have significantly expanded the existing 44-group structure. However, when our subsequent validation analyses indicated that the refinements would afford only a limited degree of improvement in explaining resource utilization relative to the significant increase in complexity that they would entail, we decided not to implement them at that time (see the FY 2001 final rule, 65 FR 46773, July 31, 2000). Nevertheless, since the BBRA provision had demonstrated a Congressional interest in securing refinements to reimburse nursing homes more fairly and accurately for the care of medically complex patients, we continued to conduct research in this area.

The Congress subsequently enacted section 311(e) of the BIPA, which directed us to conduct a study of the different systems for categorizing patients in Medicare SNFs in a manner that accounts for the relative resource utilization of different patient types, and to issue a report with any appropriate recommendations to the Congress by January 1, 2005. The lengthy timeframe for conducting the study, and its broad mandate to consider various classification systems and the full range of patient types, stood in sharp contrast to the BBRA language regarding more incremental refinements to the existing case-mix classification system under section 1888(e)(4)(G)(i) of the Act, and made clear that implementing the latter type of refinements to the existing system in order to better account for medically complex patients need not await the completion of the more comprehensive changes envisioned in the BIPA. Accordingly, we considered the possibility of including such refinements as part of this year's annual update of the SNF payment rates.

However, we determined that while the research gives a sound basis for developing improvements to the SNF PPS, we need additional time to review and analyze the implications. Therefore, we have decided not to implement any case-mix refinements for FY 2003. Our decision to defer implementing any case-mix refinements for the present leaves the current classification system in place. Under the provisions of section 101(a) of the BBRA, this will result in SNFs continuing to receive an estimated $1 billion in temporary add-on payments during FY 2003.

Accordingly, the payment rates set forth in this final rule reflect the continued use of the 44-group RUG–III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). Consequently, we will also maintain the add-ons to the Federal rates for the specified RUG–III groups required by section 101(a) of the BBRA and subsequently modified by section 314 of the BIPA. The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 3 and 4, with the corresponding case-mix values. These tables do not reflect the add-ons to the specified RUG–III groups provided for in the BBRA, which are applied only after all other adjustments (wage and case-mix) have been made.

Meanwhile, we will continue to explore both short-term and longer-range revisions to our case-mix classification methodology. In July 2001, we awarded a contract to the Urban Institute for performance of research to aid us in making incremental refinements to the case-mix classification system under section 1888(e)(4)(G)(i) of the Act and starting the case-mix study mandated by section 311(e) of the BIPA. The results of the research in which we are currently engaged will be included in the report to the Congress that section 311(e) of the BIPA requires us to submit by January 1, 2005. As we noted in the May 10, 2001 proposed rule (66 FR 23990), this research may also support a longer term goal of developing more integrated approaches for the payment and delivery system for Medicare post acute services generally. This broader, ongoing research project will pursue several avenues in studying various case-mix classification systems. We have encouraging preliminary results from incorporating comorbidities and complications into the classification strategy, and will thoroughly explore and evaluate this and other approaches in our ongoing work.

BILLING CODE 4120–01–P

Table 3
Case-Mix Adjusted Federal Rates and Associated Indexes
Urban

RUG-III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case-mix therapy comp.	Non-case-mix component	Total rate
RUC	1.30	2.25	158.07	206.06		62.05	426.18
RUB	0.95	2.25	115.51	206.06		62.05	383.62
RUA	0.78	2.25	94.84	206.06		62.05	362.95
RVC	1.13	1.41	137.40	129.13		62.05	328.58
RVB	1.04	1.41	126.45	129.13		62.05	317.63
RVA	0.81	1.41	98.49	129.13		62.05	289.67
RHC	1.26	0.94	153.20	86.09		62.05	301.34
RHB	1.06	0.94	128.89	86.09		62.05	277.03
RHA	0.87	0.94	105.78	86.09		62.05	253.92
RMC	1.35	0.77	164.15	70.52		62.05	296.72
RMB	1.09	0.77	132.53	70.52		62.05	265.10
RMA	0.96	0.77	116.73	70.52		62.05	249.30
RLB	1.11	0.43	134.96	39.38		62.05	236.39
RLA	0.80	0.43	97.27	39.38		62.05	198.70
SE3	1.70		206.70		12.06	62.05	280.81
SE2	1.39		169.01		12.06	62.05	243.12
SE1	1.17		142.26		12.06	62.05	216.37
SSC	1.13		137.40		12.06	62.05	211.51
SSB	1.05		127.67		12.06	62.05	201.78
SSA	1.01		122.81		12.06	62.05	196.92
CC2	1.12		136.18		12.06	62.05	210.29
CC1	0.99		120.37		12.06	62.05	194.48
CB2	0.91		110.65		12.06	62.05	184.76
CB1	0.84		102.14		12.06	62.05	176.25
CA2	0.83		100.92		12.06	62.05	175.03
CA1	0.75		91.19		12.06	62.05	165.30
IB2	0.69		83.90		12.06	62.05	158.01
IB1	0.67		81.47		12.06	62.05	155.58
IA2	0.57		69.31		12.06	62.05	143.42
IA1	0.53		64.44		12.06	62.05	138.55
BB2	0.68		82.68		12.06	62.05	156.79
BB1	0.65		79.03		12.06	62.05	153.14
BA2	0.56		68.09		12.06	62.05	142.20
BA1	0.48		58.36		12.06	62.05	132.47
PE2	0.79		96.06		12.06	62.05	170.17
PE1	0.77		93.62		12.06	62.05	167.73
PD2	0.72		87.54		12.06	62.05	161.65
PD1	0.70		85.11		12.06	62.05	159.22
PC2	0.65		79.03		12.06	62.05	153.14
PC1	0.64		77.82		12.06	62.05	151.93
PB2	0.51		62.01		12.06	62.05	136.12
PB1	0.50		60.80		12.06	62.05	134.91
PA2	0.49		59.58		12.06	62.05	133.69
PA1	0.46		55.93		12.06	62.05	130.04

Table 4
Case-Mix Adjusted Federal Rates and Associated Indexes
Rural

RUG-III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case-mix therapy comp.	Non-case-mix component	Total rate
RUC	1.30	2.25	151.02	237.62		63.20	451.84
RUB	0.95	2.25	110.36	237.62		63.20	411.18
RUA	0.78	2.25	90.61	237.62		63.20	391.43
RVC	1.13	1.41	131.27	148.91		63.20	343.38
RVB	1.04	1.41	120.82	148.91		63.20	332.93
RVA	0.81	1.41	94.10	148.91		63.20	306.21
RHC	1.26	0.94	146.37	99.27		63.20	308.84
RHB	1.06	0.94	123.14	99.27		63.20	285.61
RHA	0.87	0.94	101.07	99.27		63.20	263.54
RMC	1.35	0.77	156.83	81.32		63.20	301.35
RMB	1.09	0.77	126.63	81.32		63.20	271.15
RMA	0.96	0.77	111.52	81.32		63.20	256.04
RLB	1.11	0.43	128.95	45.41		63.20	237.56
RLA	0.80	0.43	92.94	45.41		63.20	201.55
SE3	1.70		197.49		12.88	63.20	273.57
SE2	1.39		161.48		12.88	63.20	237.56
SE1	1.17		135.92		12.88	63.20	212.00
SSC	1.13		131.27		12.88	63.20	207.35
SSB	1.05		121.98		12.88	63.20	198.06
SSA	1.01		117.33		12.88	63.20	193.41
CC2	1.12		130.11		12.88	63.20	206.19
CC1	0.99		115.01		12.88	63.20	191.09
CB2	0.91		105.71		12.88	63.20	181.79
CB1	0.84		97.58		12.88	63.20	173.66
CA2	0.83		96.42		12.88	63.20	172.50
CA1	0.75		87.13		12.88	63.20	163.21
IB2	0.69		80.16		12.88	63.20	156.24
IB1	0.67		77.83		12.88	63.20	153.91
IA2	0.57		66.22		12.88	63.20	142.30
IA1	0.53		61.57		12.88	63.20	137.65
BB2	0.68		79.00		12.88	63.20	155.08
BB1	0.65		75.51		12.88	63.20	151.59
BA2	0.56		65.06		12.88	63.20	141.14
BA1	0.48		55.76		12.88	63.20	131.84
PE2	0.79		91.77		12.88	63.20	167.85
PE1	0.77		89.45		12.88	63.20	165.53
PD2	0.72		83.64		12.88	63.20	159.72
PD1	0.70		81.32		12.88	63.20	157.40
PC2	0.65		75.51		12.88	63.20	151.59
PC1	0.64		74.35		12.88	63.20	150.43
PB2	0.51		59.25		12.88	63.20	135.33
PB1	0.50		58.09		12.88	63.20	134.17
PA2	0.49		56.92		12.88	63.20	133.00
PA1	0.46		53.44		12.88	63.20	129.52

C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We are continuing that practice for FY 2003.

The wage index adjustment is applied to the labor-related portion of the Federal rate, which is 76.128 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2003. The labor-related relative importance is calculated from the SNF market basket, and approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2003. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2003 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2003 in four steps. First, we compute the FY 2003 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2003 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2003 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we sum the FY 2003 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and capital-related expenses) to produce the FY 2003 labor-related relative importance. Tables 5 and 6 show the Federal rates by labor-related and non-labor-related components.

BILLING CODE 4120–01–P

Table 5
Case-Mix Adjusted Federal Rates for Urban SNFs
By Labor and Non-Labor Component

RUG-III category	Total rate	Labor portion	Non-labor portion
RUC	426.18	324.44	101.74
RUB	383.62	292.04	91.58
RUA	362.95	276.31	86.64
RVC	328.58	250.14	78.44
RVB	317.63	241.81	75.82
RVA	289.67	220.52	69.15
RHC	301.34	229.40	71.94
RHB	277.03	210.90	66.13
RHA	253.92	193.30	60.62
RMC	296.72	225.89	70.83
RMB	265.10	201.82	63.28
RMA	249.30	189.79	59.51
RLB	236.39	179.96	56.43
RLA	198.70	151.27	47.43
SE3	280.81	213.78	67.03
SE2	243.12	185.08	58.04
SE1	216.37	164.72	51.65
SSC	211.51	161.02	50.49
SSB	201.78	153.61	48.17
SSA	196.92	149.91	47.01
CC2	210.29	160.09	50.20
CC1	194.48	148.05	46.43
CB2	184.76	140.65	44.11
CB1	176.25	134.18	42.07
CA2	175.03	133.25	41.78
CA1	165.30	125.84	39.46
IB2	158.01	120.29	37.72
IB1	155.58	118.44	37.14
IA2	143.42	109.18	34.24
IA1	138.55	105.48	33.07
BB2	156.79	119.36	37.43
BB1	153.14	116.58	36.56
BA2	142.20	108.25	33.95
BA1	132.47	100.85	31.62
PE2	170.17	129.55	40.62
PE1	167.73	127.69	40.04
PD2	161.65	123.06	38.59
PD1	159.22	121.21	38.01
PC2	153.14	116.58	36.56
PC1	151.93	115.66	36.27
PB2	136.12	103.63	32.49
PB1	134.91	102.70	32.21
PA2	133.69	101.78	31.91
PA1	130.04	99.00	31.04

Table 6
Case-Mix Adjusted Federal Rates for Rural SNFs by Labor and Non-Labor Component

RUG-III category	Total rate	Labor portion	Non-labor portion
RUC	451.84	343.98	107.86
RUB	411.18	313.02	98.16
RUA	391.43	297.99	93.44
RVC	343.38	261.41	81.97
RVB	332.93	253.45	79.48
RVA	306.21	233.11	73.10
RHC	308.84	235.11	73.73
RHB	285.61	217.43	68.18
RHA	263.54	200.63	62.91
RMC	301.35	229.41	71.94
RMB	271.15	206.42	64.73
RMA	256.04	194.92	61.12
RLB	237.56	180.85	56.71
RLA	201.55	153.44	48.11
SE3	273.57	208.26	65.31
SE2	237.56	180.85	56.71
SE1	212.00	161.39	50.61
SSC	207.35	157.85	49.50
SSB	198.06	150.78	47.28
SSA	193.41	147.24	46.17
CC2	206.19	156.97	49.22
CC1	191.09	145.47	45.62
CB2	181.79	138.39	43.40
CB1	173.66	132.20	41.46
CA2	172.50	131.32	41.18
CA1	163.21	124.25	38.96
IB2	156.24	118.94	37.30
IB1	153.91	117.17	36.74
IA2	142.30	108.33	33.97
IA1	137.65	104.79	32.86
BB2	155.08	118.06	37.02
BB1	151.59	115.40	36.19
BA2	141.14	107.45	33.69
BA1	131.84	100.37	31.47
PE2	167.85	127.78	40.07
PE1	165.53	126.01	39.52
PD2	159.72	121.59	38.13
PD1	157.40	119.83	37.57
PC2	151.59	115.40	36.19
PC1	150.43	114.52	35.91
PB2	135.33	103.02	32.31
PB1	134.17	102.14	32.03
PA2	133.00	101.25	31.75
PA1	129.52	98.60	30.92

BILLING CODE 4120–01–C

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or lesser than would otherwise be made in the absence of the wage adjustment. In this fifth PPS year (Federal rates effective October 1, 2002), we are applying the most recent wage index using the hospital wage data, and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2002. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MEDPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for this year is 0.9997.

The wage index applicable to FY 2003 can be found in Table 7 and Table 8 of this notice.

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.7792
Taylor, TX	
0060 Aguadilla, PR	0.4587
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9600
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0594
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8384
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9315
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7859
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9735
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9225
Blair, PA	
0320 Amarillo, TX	0.9034

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2358
Anchorage, AK	
0440 Ann Arbor, MI	1.1103
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8044
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8997
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	.0.4337
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9876
Buncombe, NC	
Madison, NC	
0500 Athens, GA	1.0211
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	0.9991
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1017
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8325
Lee, AL	
0600 Augusta-Aiken, GA–SC	1.0264
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9637
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9877
Kern, CA	
0720 Baltimore, MD	0.9929
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9664
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3202
Barnstable, MA	
0760 Baton Rouge, LA	0.8294
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8324
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2282
Whatcom, WA	
0870 Benton Harbor, MI	0.8965
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2150
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9022
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8757
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8341
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9222
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7972
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8907
Monroe, IN	
1040 Bloomington-Normal, IL	0.9109
McLean, IL	
1080 Boise City, ID	0.9310
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1229
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9689
Boulder, CO	
1145 Brazoria, TX	0.8535
Brazoria, TX	
1150 Bremerton, WA	1.0944
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8880

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cameron, TX	
1260 Bryan-College Station, TX	0.8821
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9365
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0052
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4371
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8932
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9690
Natrona, WY	
1360 Cedar Rapids, IA	0.9056
Linn, IA	
1400 Champaign-Urbana, IL	1.0635
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9235
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8898
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9875
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0438
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.8976
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8628
Laramie, WY	
1600 Chicago, IL	1.1044
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9745
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9381
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8406
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9670
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9916
El Paso, CO	
1740 Columbia, MO	0.8496
Boone, MO	
1760 Columbia, SC	0.9307
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8374
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9751
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8729
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1453
Benton, OR	
1900 Cumberland, MD–WV	0.7847
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9998
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8859
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA–IL	0.8835
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9282
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9071
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8973
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8055
Macon, IL	
2080 Denver, CO	1.0601
Adams, CO	
Arapahoe, CO	
Broomfield, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8791
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0448
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8137
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9356
Kent, DE	
2200 Dubuque, IA	0.8795
Dubuque, IA	
2240 Duluth-Superior, MN–WI	1.0368
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0684
Dutchess, NY	
2290 Eau Claire, WI	0.8952
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9265
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9722
Elkhart, IN	
2335 Elmira, NY	0.8416
Chemung, NY	
2340 Enid, OK	0.8376
Garfield, OK	
2360 Erie, PA	0.8925
Erie, PA	
2400 Eugene-Springfield, OR	1.0944
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8177
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.9684
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8889
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8100
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	1.0682
Coconino, AZ	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Kane, UT	
2640 Flint, MI	1.1135
Genesee, MI	
2650 Florence, AL	0.7792
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8780
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0066
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0297
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9680
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9823
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7895
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9693
Okaloosa, FL	
2760 Fort Wayne, IN	0.9457
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9446
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0169
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8505
Etowah, AL	
2900 Gainesville, FL	0.9871
Alachua, FL	
2920 Galveston-Texas City, TX	0.9465
Galveston, TX	
2960 Gary, IN	0.9584
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8281
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8892
Wayne, NC	
2985 Grand Forks, ND–MN	0.8897
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9456
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9525
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8950
Cascade, MT	
3060 Greeley, CO	0.9237
Weld, CO	
3080 Green Bay, WI	0.9502
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9282
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9100
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9122
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9268
Washington, MD	
3200 Hamilton-Middletown, OH	0.9418
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9223
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1549
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7659
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9028
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1457
Honolulu, HI	
3350 Houma, LA	0.8317
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9892
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9636
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8903
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9717
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9587
Johnson, IA	
3520 Jackson, MI	0.9532
Jackson, MI	
3560 Jackson, MS	0.8607
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9275
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9381
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8239
Onslow, NC	
3610 Jamestown, NY	0.7976
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9849
Rock, WI	
3640 Jersey City, NJ	1.1190
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8268
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8329
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7749
Craighead, AR	
3710 Joplin, MO	0.8613
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battle Creek, MI	1.0595
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8122
Kankakee, IL	
3760 Kansas City, KS–MO	0.9736
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9686
Kenosha, WI	
3810 Killeen-Temple, TX	0.9570

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Coryell, TX	
3840 Knoxville, TN	0.8970
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8971
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.9400
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8452
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9278
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7965
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9357
Polk, FL	
4000 Lancaster, PA	0.9078
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9726
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8472
Webb, TX	
4100 Las Cruces, NM	0.8745
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.1521
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8323
Douglas, KS	
4200 Lawton, OK	0.8315
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9179
Androscoggin, ME	
4280 Lexington, KY	0.8581
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9483
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9892
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.9097
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8629
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2001
Los Angeles, CA	
4520 Louisville, KY–IN	0.9276
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.9646
Lubbock, TX	
4640 Lynchburg, VA	0.9219
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9204
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0467
Dane, WI	
4800 Mansfield, OH	0.8900
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4914
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8428
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0498
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	1.0253
Brevard, Fl	
4920 Memphis, TN–AR–MS	0.8920
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9742
Merced, CA	
5000 Miami, FL	0.9802
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1213
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9893
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN-WI	1.0903
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9157
Missoula, MT	
5160 Mobile, AL	0.8108
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0498
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0674
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8137
Ouachita, LA	
5240 Montgomery, AL	0.7734
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9284
Delaware, IN	
5330 Myrtle Beach, SC	0.8976
Horry, SC	
5345 Naples, FL	0.9754
Collier, FL	
5360 Nashville, TN	0.9578
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3357
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2408
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1767
New London, CT	
5560 New Orleans, LA	0.9046
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4414
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1381
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Warren, NJ	
5660 Newburgh, NY–PA	1.1387
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8574
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5072
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9402
Marion, FL	
5800 Odessa-Midland, TX	0.9397
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8900
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0960
Thurston, WA	
5920 Omaha, NE–IA	0.9978
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1474
Orange, CA	
5960 Orlando, FL	0.9640
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8344
Daviess, KY	
6015 Panama City, FL	0.8865
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8127
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8610
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8739
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.0713
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9820
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7962
Jefferson, AR	
6280 Pittsburgh, PA	0.9365
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0235
Berkshire, MA	
6340 Pocatello, ID	0.9372
Bannock, ID	
6360 Ponce, PR	0.5169
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9794
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.0667
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0854
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9984
Utah, UT	
6560 Pueblo, CO	0.8820
Pueblo, CO	
6580 Punta Gorda, FL	0.9218
Charlotte, FL	
6600 Racine, WI	0.9334
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9990
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8846
Pennington, SD	
6680 Reading, PA	0.9295
Berks, PA	
6690 Redding, CA	1.1135
Shasta, CA	
6720 Reno, NV	1.0648
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1491
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9477
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1365
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8614
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.2139
Olmsted, MN	
6840 Rochester, NY	0.9194
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9625
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9228
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1500
El Dorado, CA	
Placer, CA	
Sacramento, CA	
A6960 Saginaw-Bay City-Midland, MI	0.9650
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9700
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9544
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.8855
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0500
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4623
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9945
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8374
Tom Green, TX	
7240 San Antonio, TX	0.8753
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1131
San Diego, CA	
7360 San Francisco, CA	1.4142
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4145
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4741
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1271
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0481
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3646
Santa Cruz, CA	
7490 Santa Fe, NM	1.0712
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3046
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9425
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9376
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton-Wilkes-Barre—Hazleton, PA	0.8599
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1474
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7869
Mercer, PA	
7620 Sheboygan, WI	0.8697
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9255
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8987
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.9046
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9257
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9802
St. Joseph, IN	
7840 Spokane, WA	1.0852
Spokane, WA	
7880 Springfield, IL	0.8659
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8424
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0927
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.8941
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8804
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0506
San Joaquin, CA	
8140 Sumter, SC	0.8273
Sumter, SC	
8160 Syracuse, NY	0.9714
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.0940
Pierce, WA	
8240 Tallahassee, FL	0.8504
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9065
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8599
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8088
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9810
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9199
Shawnee, KS	
8480 Trenton, NJ	1.0432
Mercer, NJ	
8520 Tucson, AZ	0.8911
Pima, AZ	
8560 Tulsa, OK	0.8332
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8130
Tuscaloosa, AL	
8640 Tyler, TX	0.9521
Smith, TX	
8680 Utica-Rome, NY	0.8465
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3354
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1096
Ventura, CA	
8750 Victoria, TX	0.8756
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0031
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9418
Tulare, CA	
8800 Waco, TX	0.8073
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0851

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8069
Black Hawk, IA	
8940 Wausau, WI	0.9782
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9939
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7670
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9520
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8498
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8544
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1173
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9640
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0569
Yakima, WA	
9270 Yolo, CA	0.9434
Yolo, CA	
9280 York, PA	0.9026
York, PA	
9320 Youngstown-Warren, OH	0.9358
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0276
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8589
Yuma, AZ	

TABLE 8.—WAGE INDEX FOR RURAL AREAS

Rural area	Wage index
Alabama	0.7660
Alaska	1.2293
Arizona	0.8493
Arkansas	0.7666
California	0.9899
Colorado	0.9015
Connecticut	1.2394
Delaware	0.9128
Florida	0.8827
Georgia	0.8230
Guam	0.9611
Hawaii	1.0255
Idaho	0.8747
Illinois	0.8204
Indiana	0.8755
Iowa	0.8315
Kansas	0.7900
Kentucky	0.8079
Louisiana	0.7580
Maine	0.8874
Maryland	0.8946
Massachusetts	1.1288
Michigan	0.9009
Minnesota	0.9151
Mississippi	0.7680
Missouri	0.7881
Montana	0.8481
Nebraska	0.8204
Nevada	0.9577
New Hampshire	0.9839
New Jersey*.	
New Mexico	0.8872
New York	0.8542
North Carolina	0.8669
North Dakota	0.7788
Ohio	0.8613
Oklahoma	0.7590
Oregon	1.0259
Pennsylvania	0.8462
Puerto Rico	0.4356
Rhode Island*.	
South Carolina	0.8607
South Dakota	0.7815
Tennessee	0.7877
Texas	0.7821
Utah	0.9312
Vermont	0.9345
Virginia	0.8504
Virgin Islands	0.7845
Washington	1.0179
West Virginia	0.7975
Wisconsin	0.9162
Wyoming	0.9007

*All counties within the State are classified urban.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act and section 311 of the BIPA, the payment rates listed here reflect an update equal to the SNF market basket minus 0.5 percentage points, which equals 2.6 percentage points. We will continue to publish the rates, wage index, and case-mix classification methodology in the **Federal Register** before August 1 preceding the start of each succeeding fiscal year.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption under the current 44-group RUG–III classification system that beneficiaries who are correctly assigned to one of the upper 26 RUG–III groups in the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to that point.

Those beneficiaries assigned to any of the lower 18 groups are not automatically classified as either meeting or not meeting the definition, but instead receive an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 26 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this notice, we are continuing the existing designation of the upper 26 RUG–III groups for purposes of this administrative presumption, consisting of the following RUG–III classifications: all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

F. Initial Three-Year Transition Period

As noted previously, the rates that we are announcing in this notice are for the fifth year of the SNF PPS. As a result, the PPS is no longer operating under the initial three-year transition period from facility-specific to Federal rates and, therefore, payment now equals 100 percent of the adjusted Federal per diem rate.

G. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the XYZ SNF described in Table 9, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. XYZ's 12-month cost reporting period begins October 1, 2002. XYZ's total PPS payment would equal $19,460. The Labor and Non-labor columns are derived from Table 5. The 4 percent adjustment to the Federal rates enacted in section 101(d) of the BBRA and the 16.66 percent adjustment to the nursing component of the Federal rates enacted in section 312 of the BIPA are no longer in effect for FY 2003, and, thus, are not reflected in the table. However, the adjustments for certain specified RUG–III groups enacted in section 101(a) of the BBRA (as amended by section 314 of the BIPA) remain in effect, and are reflected in the table.

TABLE 9.—SNF XYZ: LOCATED IN STATE COLLEGE, PA

[Wage Index: 0.8941]

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adjustment	Medicare days	Payment
RVC	$250.14	0.8941	$223.65	$78.44	$302.09	[1] $322.33	14	$4,513
RHA	193.30	0.8941	172.83	60.62	233.45	[1] 249.09	16	3,985
SSC	161.02	0.8941	143.97	50.49	194.46	[2] 233.35	30	7,001
IA2	109.18	0.8941	97.62	34.24	131.86	131.86	30	3,956
Total							90	19,460

[1] Reflects a 6.7 percent adjustment from section 314 of the BIPA.
[2] Reflects a 20 percent adjustment from section 101(a) of the BBRA.

III. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This notice incorporates the latest available projections of the SNF market basket index. We have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the July 31, 2001 **Federal Register** (66 FR 39562), we included a complete discussion on the rebasing of the SNF market basket to FY 1997. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Tables 10.A, 10.B, and Appendix A, along with other relevant information, in the July 31, 2001 **Federal Register**.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 10 summarizes the updated labor-related share for FY 2003. The forecasted rates of growth used to compute the SNF market basket percentage described in section II.D of this notice are shown in Table 11.

TABLE 10.—FY 2003 LABOR-RELATED SHARE

Cost category	Relative importance	
	FY 2003	FY 2002
Wages and salaries	54.796	54.185
Employee benefits	11.232	10.988
Nonmedical professional fees	2.652	2.667
Labor-intensive services	4.124	4.107
Capital-related	3.324	3.432
Total	76.128	75.379

TABLE 11.—SNF TOTAL COST MARKET BASKET CHANGE FY 1998 THROUGH FY 2004

Fiscal years beginning October 1	Total [1]
Fiscal year:	
1998	2.8
1999	3.0
2000	4.0
2001	4.9
2002	3.6
2003	3.1
2004	3.0

[1] Skilled Nursing Facility Total Cost market Basket.

Source: (Table 10) Standard & Poor's DRI HCC, 2nd QTR.

Source: (Table 11) Global Insights Inc., DRI–WEFA, 2nd Qtr, 2002. @USAMACRO/MODTREND@CISSIM/TL0502.SIM.

Released by CMS, OACT, National Health Statistics Group.

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, as described in the previous section, from the average of the prior fiscal year to the average of the current fiscal year. For the Federal rates established in this notice, the percentage increase in the SNF market basket index is used to compute the update factor occurring between FY 2002 and FY 2003. We used the 2nd quarter 2002 forecasted percentage increases of the FY 1997 rebased SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factors. Finally, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates, because the three-year transition period from facility-specific to full Federal rates that started with cost reporting periods beginning in July of 1998 has expired.

B. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(III) of the Act requires that the update factor used to establish the FY 2003 Federal rates be at a level equal to the market basket percentage change minus 0.5 percentage point. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2001 through September 30, 2002 to the average market basket level for the period of October 1, 2002 through September 30, 2003. Using this process, the update factor for FY 2003 SNF Federal rates is 2.6 percentage points (3.1 percentage points minus 0.5 percentage point).

We used this revised update factor to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

IV. Consolidated Billing

As established by section 4432(b) of the BBA, the consolidated billing requirement places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. Section 103 of the BBRA amended this provision by further excluding a number of individual services, identified by Healthcare Common Procedure Coding System (HCPCS) code, within several broader categories that otherwise remained subject to the provision. Section 313 of the BIPA further amended this provision by repealing its Part B aspect; that is, its applicability to services furnished to a resident during a SNF stay that Medicare does not cover. (However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) In the final rule that we published in the July 31, 2001 **Federal Register** (66 FR 39562), we revised the consolidated billing regulations to reflect the most recent (the BIPA) amendments. To date, the Congress has enacted no further legislation affecting this provision. Accordingly, we do not include any revisions to the consolidated billing regulations in this notice.

V. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In the July 31, 2001 final rule (66 FR 39562), we announced the conversion of swing-bed hospitals to the SNF PPS, effective with the start of the provider's first cost reporting period beginning on or after July 1, 2002. We selected this date consistent with the statutory provision to integrate swing-bed hospitals into the SNF PPS by the end of the SNF transition period, June 30, 2002.

We note that the necessary training materials and support structures were developed to assist swing-bed hospitals affected by this change. The new 2-page customized Minimum Data Set (MDS) for Swing-Bed Hospitals (SB–MDS) has been approved for use by OMB, and is posted on our web site at *http://www.cms.hhs.gov/providers/snfpps/snfpps_swing-bed.asp.* The MDS data collection and transmission software, RAVEN–SB, was customized to reflect the use of the new 2-page form and is now in use.

Swing-bed hospitals must submit MDS assessments on the same schedule as SNFs (the 5th, 14th, 30th, 60th, and 90th covered day of the admission). Since the average swing-bed length of stay is only 9 days, most swing-bed hospitals will, on the average, only need to complete and transmit one MDS record per stay. The transmission requirements are similar to those used by SNFs, and swing-bed hospitals have been notified of the program requirements for establishing dial-in capability to transmit the SB–MDS records. The swing-bed transmission system was customized to permit direct transmission to the swing-bed data repository, and swing-bed hospitals have a dedicated Help Desk to assist them with transmission and technical support issues.

As part of the implementation effort, we have evaluated MDS policies and procedures applicable to SNFs to ensure their applicability to swing-bed hospitals. In most cases, swing-bed hospitals and SNFs follow the same procedures. However, whenever possible, we streamlined those procedures to reflect the operational needs of the swing-bed hospitals. For example, SNFs are required to transmit their MDS records within 31 days of completion, which allows for completion of Resident Assessment Protocols (RAPs), data editing, and care planning. The system edits developed for the SB–MDS reflect the shorter lengths of stay and the inapplicability of the MDS RAPs and care planning components to swing-bed hospitals, and require transmission within 14 days of completion. Finally, we developed and distributed detailed training materials on MDS preparation, transmission, and claims processing. These materials are posted on our web site and updated regularly as new information becomes available. Swing-bed hospitals may check the SNF PPS web site at *http://www.cms.hhs.gov/providers/snfpps/snfpps_swing-bed.asp* and *http://www.cms.hhs.gov/medlearn/sbmds.asp* to receive the latest information.

VI. Collection of Information Requirements

The current Medicare assessment requirements are based on section 4432(a) of the Balanced Budget Act of 1997 (BBA), which amended section 1888(e) of the Social Security Act (the Act) to mandate implementation of a Medicare prospective payment system for SNFs. This section of the Act requires annual adjustments to the PPS rates based on geographic variation and SNF case-mix, and prescribes the methodology for updating the rates in future years.

The PPS case-mix adjustments are derived from the clinical information collected by providers about Medicare Part A covered beneficiaries during their SNF stays, using the minimum data set (MDS). As a result of a mandate contained in the nursing home reform legislation in the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), a uniform MDS was required as a part of the comprehensive resident assessment for all certified long-term care facilities. The provisions of OBRA '87 require that certified long-term care facilities collect information concerning all residents to support care planning activities. Comprehensive assessments, using the MDS, are required at admission (no later than 14 days following admission), annually, and upon a significant change in a resident's condition. In addition, quarterly reviews of each resident are required. A shorter version of the MDS has been developed for these quarterly assessments.

With implementation of the SNF PPS, providers were required to perform MDS assessments of all beneficiaries in Medicare Part A covered stays on days 5, 14, 30, 60, and 90 of their Medicare covered stays. The assessments required for the SNF PPS are in addition to those required by the OBRA '87, although there is often overlap in the timing of the required assessments so that one assessment may be used to satisfy both the OBRA '87 and SNF PPS requirements. The time required to complete the full version of the MDS is estimated to be 90 minutes. Beginning July 1, 2002, a shorter version of the MDS, the Medicare PPS Assessment Form (MPAF), became available for use to satisfy Medicare assessment requirements. We announced the option of using this shorter version in the **Federal Register** (67 FR 38128, May 31, 2002). Performance of this version of the assessment is estimated to require only 45 minutes of staff time.

When a Medicare SNF PPS assessment is due at the same time as an OBRA-required assessment (for example, a 14-day Medicare SNF PPS assessment combined with an initial admission assessment) providers must meet the more stringent of the two sets of requirements. Thus, the provider must perform an MDS that includes all of the MPAF items plus any additional items required by the clinical assessment, in order to meet both sets of standards. If the OBRA (or State) requirements call for a full MDS, the full MDS may be submitted to satisfy the Medicare SNF PPS requirements. When a full MDS assessment is required to fulfill the dual requirements of a Medicare SNF PPS and OBRA, completion time is estimated to be 90 minutes.

The total burden of the full MDS, which includes all administrative time, as well as the time actually required by the assessment process, is estimated to be 5,696,218 hours annually. The extent to which the MPAF will be utilized is not known, so time saving associated with its use is not factored into this estimate.

Swing-beds began transitioning into the Medicare SNF PPS on July 1, 2002 and are required to complete a modified version of the MDS, the MDS–SB, which collects only the information needed to calculate the RUG–III classifications for case-mix adjustment. The MDS–SB is the only version of the MDS that is acceptable for use in Medicare SNF PPS swing-bed facilities. There are no OBRA '87 requirements for swing-bed providers. Completion of each MDS–SB assessment is estimated to require 30 minutes. The total burden, including the amount of time required for the actual assessment process as well as administrative time, is estimated to be 132,360 hours per year across all swing-bed providers.

These information collection requirements are currently approved by OMB through December 31, 2002 under OMB numbers 0938–0739 for SNFs and 0938–0872 for swing-bed facilities. We are not proposing any changes to these requirements in this notice.

VII. Regulatory Impact Analysis

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, (the Act) the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is major, as defined in Title 5, United States Code, section 804(2), because we estimate the impact of the update will be to increase payments to SNFs by approximately $400 million. The update set forth in this notice applies to payments in FY 2003. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This notice will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this notice falls below these thresholds as well. Because this notice does not impose unfunded mandates, as defined by section 202 of UMRA, we have not prepared an assessment.

Executive Order 13132 (effective November 2, 1999) establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications. As stated above, this notice will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $11.5 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of a small entity.

This notice updates the SNF PPS rates and wage index published in the July 31, 2001 final rule (66 FR 39562), thereby increasing aggregate payments by an estimated $400 million. Although, as illustrated in Table 12, the simultaneous expiration of several temporary payment increases established under recent legislation results in a net decrease in aggregate Medicare payments in FY 2003, these decreases are not a result of this notice, but rather, are specifically mandated in the legislation. Because Medicare is a relatively minor payer for nursing home care (approximately 9 percent of patient days compared to 65 percent for Medicaid), we do not expect that the 2.6 percent rate increase and wage index update will have a significant impact upon small entities overall. We note that some individual providers may experience larger increases (or even decreases) in payments than others due to changes in payments that result from updating the wage index. However, we do not expect these changes to affect small entities disproportionately. Accordingly, we certify that this notice will not have a significant impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the payment rates set forth in this notice also affect rural hospital swing-bed services, we believe that this notice will have an impact on small rural hospitals (this impact is discussed later in this section). However, because this incremental increase in payments for Medicare swing-bed services is relatively minor in comparison to overall rural hospital revenues, this notice will not have a significant impact on the overall operations of these small rural hospitals.

A. Background

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section specifies that the base year cost data to be used for computing the RUG–III payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates.

This notice sets forth updates of the SNF PPS rates contained in the July 31, 2001 final rule (66 FR 39562). Table 12 presents the projected effects of the changes in the SNF PPS from FY 2002 to FY 2003, as well as statutory changes effective for FY 2002 and FY 2003. In so doing, we estimate the effects of each change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit, based on the latest available Medicare claims data and MDS 2.0 assessment data from 1999. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

B. Impact of the Notice

The purpose of this notice is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to provide an update to the rates for FY 2003. As mentioned previously, we have decided not to implement any case-mix refinements for FY 2003. Our decision to defer implementing any case-mix refinements for the present leaves the current classification system in place. Under the provisions of section 101(a) of the BBRA, this will result in SNFs continuing to receive an estimated $1 billion in temporary add-on payments during FY 2003.

In updating the rates for FY 2003, we made a number of standard annual revisions and clarifications mentioned elsewhere in this notice (for example, the update to the wage and market basket indexes used for adjusting the Federal rates). These revisions will increase payments to SNFs by approximately $400 million.

In addition to the update, section 101(d)(1) of the BBRA and section 312 of the BIPA, providing for temporary adjustments to the SNF PPS payment rates, will expire by statute, on October 1, 2002. These temporary adjustments together account for an estimated $1.4 billion dollars per year in payments to the nursing home industry. The expiration of these temporary add-ons results in a net decrease in payments for SNFs in FY 2003.

The aggregate decrease in payments associated with this notice is estimated to be $1 billion. There are three areas of change that produce this net decrease in payment for facilities:

- Section 312 of the BIPA temporarily increases the nursing component of the Federal rates payments by 16.66 percent. This provision results in $900 million in payments per year. The provision expires by statute on October 1, 2002.
- Section 101(d)(1) of the BBRA temporarily increases payments for all RUG–III groups by 4 percent, and prohibits the increases from being built into the base Federal rates. This provision results in $500 million in payments per year. The provision expires by statute on October 1, 2002.
- The annual update in payments from FY 2002 levels to FY 2003 levels, resulting in a $400 million increase in payments per year. The total change in Federal payments includes all of the previously noted changes in addition to the effect of the annual update to the rates and is illustrated in Table 12.

Table 12 only illustrates the impact of the changes on SNFs; it does not apply to swing-bed hospital units. A discussion of the impact on those providers follows.

In developing the impact analysis, we were able to increase significantly the number of facilities included in the data. With the end of the transition period, there is no longer a need to calculate facility-specific rates using 1995 cost report information to estimate current SNF payments. This has allowed us to expand the data base to all SNFs submitting claims in FY 2001 (the latest available data) in estimating the impact of annual updates.

The impacts are shown in Table 12. The breakdown of the various categories of data in the table is as follows:

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next twenty rows show the effects on urban versus rural status by census region. The final four rows show the effects on facilities by ownership type.

The second column in the table shows the number of facilities in the impact database.

The third column shows the projected effect of eliminating the 16.66 percent add-on to the nursing portion of the Federal rate mandated by the BIPA. As expected, this results in a decrease in payments for all facilities; however, as seen in the table, the varying effect results in a distributional impact. In addition, since this increase only applies to the nursing portion of the payment rate, the effect on total expenditures is less than 16.66 percent.

The fourth column of the table shows the effect of the annual update to the wage index. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fifth column of the table shows the effect of all of the changes on the FY 2003 payments. Section 101(d) of the BBRA increases payments for all RUG–III groups by 4 percent and is the same for all types of facilities. This temporary add-on expires October 1, 2002, and is reflected in the total column. This includes all of the previous changes, the expiration of the 4 percent add-on to the Federal rates, and the increase to this year's payment rates by the market basket rate less 0.5 percentage point, or 2.6 percentage points. The market basket increase of 2.6 percentage points is also constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will decrease by 9.1 percent in total, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes vary by specific types of providers and by location. For example, freestanding facilities experience payment decreases, while the decrease for hospital-based and rural providers is less significant.

TABLE 12.—PROJECTED IMPACT OF FY 2003 UPDATE TO THE SNF PPS

	Number of facilities	Eliminate add-on to nursing rates (Percent)	Wage index change (Percent)	Total FY 2003 change* (Percent)
Total	13,944	−7.4	0.0	−8.8
Urban	9,485	−7.5	−0.1	−9.0
Rural	4,459	−7.2	0.5	−8.1
Hospital-based urban	1,049	−7.8	−0.1	−9.3
Freestanding urban	7,885	−7.4	−0.1	−8.9
Hospital-based rural	660	−7.6	0.5	−8.5
Freestanding rural	3,500	−7.1	0.5	−8.0
Urban by region:				
New England	911	−7.6	−0.2	−9.2
Middle Atlantic	1,469	−7.8	−0.8	−9.9
South Atlantic	1,522	−7.3	0.2	−8.5
East North Central	1,823	−7.3	0.0	−8.7
East South Central	410	−7.4	−0.3	−9.1
West North Central	662	−7.5	0.3	−8.6
West South Central	847	−7.4	0.6	−8.2
Mountain	413	−7.2	0.7	−8.0
Pacific	1,422	−7.5	0.0	−8.9
Rural by region:				
New England	129	−7.1	0.4	−8.1
Middle Atlantic	238	−7.4	−0.9	−9.6
South Atlantic	627	−7.1	0.5	−8.0
East North Central	845	−7.1	0.3	−8.2
East South Central	479	−7.2	1.0	−7.7
West North Central	1,045	−7.4	0.8	−8.1
West South Central	605	−7.1	0.8	−7.8
Mountain	303	−7.0	0.5	−7.9
Pacific	188	−6.9	0.4	−7.9
Ownership:				
Government	701	−7.8	−0.1	−9.3
Proprietary	8,839	−7.4	0.0	−8.8
Voluntary	3,514	−7.6	−0.1	−9.1

*Column 5 includes the effects of reducing payments by 4 percent across all providers (resulting from the expiration of section 101(d) of the BBRA, effective October 1, 2002) and shows the effect of the market basket update that increases payment by 2.6 percent across all providers.

D. Impact on Swing-Bed Providers

In the July 31, 2001 final rule (66 FR 39562), we projected payments for swing-bed providers under the SNF PPS by first using the MEDPAR analog to assign 1999 claims records to a RUGIII group, then applying FY 2002 payment rates to calculate annual estimated payments.

For the purpose of this notice, we have used the MEDPAR analog classification, and estimated current SNF PPS reimbursement as if the swing-bed providers were fully phased into the SNF PPS in FY 2002. Then, using the same MEDPAR analog classifications, we applied the FY 2003 changes for a fully phased-in swing-bed population. We estimate that the overall impact on swing-bed facilities will be a decrease in payments of approximately 9 percent, or $22 million.

We anticipate that the actual overall impact of the elimination of the rate add-ons will be approximately equal to the 8.5 percent rate decrease projected for rural hospital-based SNFs.

E. Other Options Considered

As discussed in section II.B of this notice, we determined that while the research on case-mix refinements gives a sound basis for developing case-mix refinements in the SNF PPS, we need additional time to review and analyze the implications. Therefore, we have decided not to implement any case-mix refinements for FY 2003. We are proceeding with our research to evaluate both incremental and long-range comprehensive changes in the case-mix classification system.

Finally, in accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

VIII. Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

IX. Waiver of Proposed Rulemaking

We ordinarily publish a proposed notice in the **Federal Register** to provide a period for public comment before the provisions of a notice such as this take effect. We can waive this procedure, however, if we find good cause that a notice and comment period procedure is impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice issued.

We believe it is unnecessary to undertake a proposed notice with comment period as the statute requires annual updates to the SNF PPS rates, the methodologies used to update the rates have been previously subject to public comment, and this notice reflects the application of previously established methodologies. Therefore, for good cause, we waive prior notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program).

Dated: June 14, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 11, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–19373 Filed 7–26–02; 3:54 pm]

BILLING CODE 4120–01–P

Federal Register

Wednesday,
July 31, 2002

Part VI

Securities and Exchange Commission

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval on a Pilot Basis to a Proposed Rule Change by the National Assocation of Securities Dealers, Inc., Relating to the Operation of the Alternative Display Facility for Quoting and Trading in Securities of the Nasdaq Stock Market, Inc.; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46249; File No. SR–NASD–2002–97]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval on a Pilot Basis to a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Operation of the Alternative Display Facility for Quoting and Trading in Securities of The Nasdaq Stock Market, Inc.

July 24, 2002.

The Commission is approving the National Association of Securities Dealers, Inc.'s (''NASD's'' or ''Association's'') Alternative Display Facility (''ADF'') for Nasdaq stocks for a nine-month pilot period. This proposal for a pilot was filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] on July 22, 2002, by the NASD. In this proposal, as described by the NASD in Items I, II, and III below, the NASD proposes to establish, implement, and operate the ADF on a pilot basis (''ADF Pilot''). As discussed below, the Commission is granting accelerated approval of the proposed rule change for a pilot period to expire at the close of daily operation of the ADF Pilot on April 24, 2003. The rules related to the establishment, implementation, and operation of the Pilot ADF are substantially similar to the proposed permanent rules contained in the original ADF proposal related to the establishment, implementation, and operation of the permanent ADF.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 45156 (December 14, 2002), 67 FR 388 (January 3, 2002) (Notice of filing of SR–NASD–2001–90); 45278 (January 14, 2002), 67 FR 3252 (January 23, 2002) (Extending the public comment period for SR–NASD–2001–90); 45501 (March 4, 2002), 67 FR 10942 (March 11, 2002) (Notice of filing of SR–NASD–2002–28 relating to ADF fees); 45991 (May 28, 2002), 67 FR 39476 (June 7, 2002) (Notice of filing of Amendment No. 2 to SR–NASD–2001–90) (collectively, ''ADF Proposal''). The Commission intends to approve simultaneously and set an identical effective date for SR–NASD–2001–90 and SR–NASD–2002–28. The Commission notes that the ADF Proposal contains additional proposed rules not contained in the ADF Pilot. For instance, the ADF Proposal contains rules related to the separation of the NASD and the Nasdaq Stock Market, Inc. (''Nasdaq'') corporate entities. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to establish, implement, and operate, on a pilot basis, the ADF. For purposes of this ADF Pilot, NASD members will be able to quote and trade only Nasdaq securities on or through the Pilot ADF. The text of the proposed rule change is below. Additions are in *italics,* and deletions are in brackets.

IM–2110–5. Anti-Intimidation/ Coordination

The Board of Governors is issuing this interpretation to codify a longstanding policy. It is conduct inconsistent with just and equitable principles of trade for any member or person associated with a member to coordinate the prices (including quotations), trades, or trade reports of such member with any other member or person associated with a member; to direct or request another member to alter a price (including a quotation); or to engage, directly or indirectly, in any conduct that threatens, harasses, coerces, intimidates, or otherwise attempts improperly to influence another member or person associated with a member. This includes, but is not limited to, any attempt to influence another member or person associated with a member to adjust or maintain a price or quotation, whether displayed on any [automated system] *facility* operated by *NASD* [The Nasdaq Stock Market, Inc. (Nasdaq),] or otherwise, or refusals to trade or other conduct that retaliates against or discourages the competitive activities of another market maker or market participant. Nothing in this interpretation respecting coordination of quotes, trades, or trade reports shall be deemed to limit, constrain, or otherwise inhibit the freedom of a member or person associated with a member to:

(1) set unilaterally its own bid [and] *or* ask in any [Nasdaq] security, the prices at which it is willing to buy or sell any [Nasdaq] security, and the quantity of shares of any [Nasdaq] security that it is willing to buy or sell;

(2) set unilaterally its own dealer spread, quote increment, or quantity of shares for its quotations (or set any relationship between or among its dealer spread, inside spread, or the size of any quote increment) in any [Nasdaq] security;

(3) communicate its own bid or ask, or the prices at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security to any person, for the purpose of exploring the possibility of a purchase or sale of that security, and to negotiate for or agree to such purchase or sale;

(4) communicate its own bid or ask, or the price at or the quantity of shares in which it is willing to buy or sell any [Nasdaq] security, to any person for the purpose of retaining such person as an agent or subagent for the member or for a customer of the member (or for the purpose of seeking to be retained as an agent or subagent), and to negotiate for or agree to such purchase or sale;

(5) through (7) No Change.

* * * * *

2700. SECURITIES DISTRIBUTIONS

* * * * *

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(a) No Change.

(b) Definitions

For purposes of this Rule, the following words shall have the stated meanings:

(1) through (3) No Change.

(4) Bona fide independent market maker—a market maker [which] *that:*

(A) is registered as a Nasdaq *or ADF* market maker in the security to be distributed pursuant to this Rule;

(B) through (C) No Change.

(5) through (18) No Change.

(c) through (p) No Change.

* * * * *

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including ''bid wanted'' and ''offer wanted'' and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect. *If ADF closes trading in Nasdaq securities pursuant to its authority under Rule 4120A(a)(2), members would not be prohibited from trading through other markets for which trading is not halted.*

3350. Short Sale Rule

(a) No member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current *national* best (inside) bid when the current *national* best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding *national* best (inside) bid in the security.

(b) No Change.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a qualified market maker *or an ADF market maker* registered in the security in connection with bona fide market making activity. For purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market-making activity.

(2) through (8) No Change.

(d) through (e) No Change.

(f) A member that is not currently registered as a Nasdaq *or ADF* market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) through (h) No Change.

(i)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) the warrant market maker is a registered Nasdaq *or ADF* market maker for the warrant; and

(B) No Change.

(j) through (l) No Change.

* * * * *

IM–3350. Short Sale Rule

(a) (1) In developing a Short Sale Rule for Nasdaq National Market securities, [the Association] *NASD* adopted an exemption to the Rule for certain market making activity. This exemption was deemed an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq National Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by qualified Nasdaq market makers *or registered ADF market makers* in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: one must be a ''qualified'' Nasdaq market maker *or a registered ADF market maker* and one must engage in ''bona fide'' market making activity to take advantage of this exemption. With this interpretation, [the Association] *NASD* wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2) through (3) No Change.

(b) [(1)] Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market security at or below the current *national* best (inside) bid when the current *national* best (inside) bid [as displayed by The Nasdaq Stock Market] is below the preceding *national* best (inside) bid in the security. [The Association] *NASD* has determined that in order to effect a ''legal'' short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least $0.01 above the current inside bid when the current inside spread is $0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least $0.01.

(c) (1) No Change.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an ''up bid'' for the purpose of facilitating a short sale, [the Association] *NASD* would consider such activity to be a manipulative act and a violation of [the Association's] *NASD's* Short Sale Rule. *NASD* [The Association] also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a ''down bid'' for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in The Nasdaq Stock Market *or in the ADF* in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule 3350. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) No Change.

* * * * *

3370. Prompt Receipt and Delivery of Securities

(a) No Change.

(b) (1) No Change.

(2) ''Short Sales''

(A) No Change.

(B) Proprietary short sales.

No member shall effect a ''short'' sale for its own account in any security unless the member or person associated with a member makes an affirmative determination that the member can borrow the securities or otherwise provide for delivery of the securities by the settlement date. This requirement will not apply to transactions in corporate debt securities, to bona fide market making transactions by a member in securities in which it is registered as a Nasdaq *or ADF* market maker, to bona fide market maker transactions in non-Nasdaq securities in which the market maker publishes a two-sided quotation in an independent quotation medium, or to transactions [which] *that* result in a fully hedged or arbitraged position.

(C) No Change.

(3) through (5) No Change.

* * * * *

4000. THE NASDAQ STOCK MARKET

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a) A market maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact Nasdaq Market Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. *If a Registered Reporting Nasdaq market maker also is a Registered Reporting ADF Market Maker as defined in Rule 5420, it must obtain excused withdrawal status in both facilities for the same time period.* Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by Nasdaq Market Operations only upon satisfying one of the conditions specified in this Rule.

* * * * *

4600. NASDAQ MARKET MAKER REQUIREMENTS

This Rule 4600 Series applies to quotation and trading activities by Nasdaq market makers, ATS or ECNs in The Nasdaq Stock Market, Inc. operated on behalf of NASD by the Nasdaq Stock Market, Inc.

* * * * *

4630. Reporting Transactions in Nasdaq National Market Securities

This Rule 4630 Series applies to the reporting by [all] members of transactions in Nasdaq National Market securities (''designated securities'') through the Automated Confirmation Transaction Reporting Service (ACT). [These securities have been designated pursuant to the ''National Market System Securities Designation Plan with Respect to Nasdaq Securities'' (''Plan'') which has been approved by the Commission pursuant to SEC Rule 11Aa2–1.]

4631. Definitions

[(a)] Terms used in this Rule 4630 Series shall have the meaning as defined in [the Association's] *NASD's* By-Laws and Rules, SEC Rule 11Aa2–1 and the *Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis* [Plan], unless otherwise defined herein.

Paragraphs (b) through (d) are renumbered as paragraphs (b) through (d) of proposed Rule 5420.

4632. Transaction Reporting

Paragraphs (a) and (b) are renumbered as paragraphs (a) and (b) of proposed Rule 5430.

(a) When and How Transactions Are Reported

Members shall comply with Rule 5430(a) for determining when and how transactions are reported.

(b) Which Party Reports Transaction

Members shall comply with Rule 5430(b) for determining which party reports a transaction.

(c) No Change.

(d) Procedures for Reporting Price and Volume

Members [which] *that* are required, *or have the option,* to report *transactions using ACT*, pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;

REPORT 100 shares at 40.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;

BUY as agent 100 shares at 40 plus a commission of $12.50;

REPORT 100 shares at 40.

(3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions which are executed at a price which includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

Example:

BUY as principal 100 shares from another member at 40 (no mark-down included);

REPORT 100 shares at 40.

[Example:

BUY as principal 100 shares from a customer at 39⅞ which includes a ⅛ mark-down from prevailing market at 40;

REPORT 100 shares at 40.]

Example:

BUY as principal 100 shares from a customer at 39.90 which includes a $0.10 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

[Example:

SELL as principal 100 shares to a customer at 40⅛, which includes a ⅛ mark-up from the prevailing market of 40;

REPORT 100 shares at 40.]

Example:

SELL as principal 100 shares to a customer at 40.10, which includes a $0.10 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

[Example:

BUY as principal 10,000 shares from a customer at 39¾, which includes a ¼ mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.]

Example:

BUY as principal 10,000 shares from a customer at 39.75, which includes a $0.25 mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.

(B) Exception: A ''riskless'' principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee.

Example:

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of $12.50;

REPORT 100 shares at 40.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) transactions executed through [the Computer Assisted Execution System (CAES),] the Nasdaq National Market Execution System (''NNMS''), *the Primex Auction System,* or the SelectNet service;

(2) through (6) No Change.

(f) No Change.

* * * * *

4640. Reporting Transactions in Nasdaq SmallCap Market Securities

This Rule 4640 Series sets forth the [applicable reporting] requirements for *reporting* transactions in Nasdaq SmallCap Market securities (''designated securities'') *utilizing* [. Members shall utilize] the Automated Confirmation Transaction Service (ACT)[for transaction reporting].

4641. Definitions

[(a)]Terms used in this Rule 4640 Series shall have the same meaning as those defined in [the Association's] *NASD's* By-Laws and Rules, *SEC Rule 11Aa2–1 and Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis,* unless otherwise specified herein.

Paragraphs (b) through (d) are renumbered as paragraphs (b) through (d) of Rule 5420.

4642. Transaction Reporting

Paragraphs (a) and (b) are renumbered as paragraphs (a) and (b) of proposed Rule 5430.

(a) When and How Transactions are Reported

Members shall comply with Rule 5430(a) for determining when and how transactions are reported.

(b) Which Party Reports Transaction

Members shall comply with Rule 5430(b) for determining which party reports a transaction.

(c) No Change.

(d) Procedures for Reporting Price and Volume

Members [which] *that* are required, *or have the option,* to report *transactions using ACT,* pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) through (3) No Change.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be reported:

(1) transactions executed through [the Computer Assisted Execution System (CAES),] the *SmallCap* Small Order Execution System (SOES), *the Primex Auction System,* or the SelectNet service.

(2) through (5) No Change.

(f) No Change.

* * * * *

4650. Reporting Transactions in Nasdaq Convertible Debt Securities

This Rule 4650 Series sets forth the applicable reporting requirements for transactions in convertible bonds that are listed on Nasdaq (designated securities). [Members shall utilize] *and reported utilizing* the Automated Confirmation Transaction Service (ACT) [for transaction reporting].

4651. Definitions

[(a)] Terms used in this Rule 4650 Series shall have the same meaning as those defined in [the Association's] *NASD's* By-Laws and Rules, unless otherwise specified herein.

Paragraphs (b) through (d) are renumbered as paragraphs (b) through (d) of Rule 5420.

4652. Transaction Reporting

Paragraphs (a) and (b) are renumbered as paragraphs (a) and (b) of Rule 5430.

(a) When and How Transactions are Reported

Members shall comply with Rule 5430(a) for determining when and how transactions are reported.

(b) Which Party Reports Transaction

Members shall comply with Rule 5430(b) for determining which party reports a transaction.

(c) No Change.

(d) Procedures for Reporting Price and Volume

Members that are required, *or have the option,* to report *transactions using ACT,* pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) through (3) No Change.

(e) and (f) No Change.

4000A. NASD Alternative Display Facility

4100A. General

NASD Alternative Display Facility ("ADF") is the facility to be operated by NASD on a nine-month pilot basis for members that choose to quote or effect trades in Nasdaq securities ("ADF-eligible securities") otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [insert nine months from SEC approval date]. 4110A. Use of NASD Alternative Display Facility Data Systems.

NASD may at any time authorize the use of NASD's Alternative Display Facility data systems on a test basis for whatever studies it considers necessary and appropriate.

4120A. Trading Halts

(a) Authority to Initiate Halts In Trading on the Alternative Display Facility

NASD, pursuant to the procedures set forth in paragraph (b):

(1) shall halt trading otherwise than on an exchange in the Alternative Display Facility in an ADF-eligible security whenever any market eligible to trade that security imposes a trading halt, or suspends the listing, to:

(A) permit dissemination of material news;

(B) obtain information from the issuer relating to material news;

(C) obtain information relating to the issuer's ability to meet listing qualification requirements; or

(D) obtain any other information that is necessary to protect investors and the public interest.

(2) shall close NASD Alternative Display Facility to quotation activity whenever NASD's Alternative Display Facility is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor. If ADF closes trading pursuant to this subparagraph (2), members would not be prohibited from trading through other markets for which trading is not halted.

Members shall promptly notify NASD whenever they have knowledge of any matter related to a security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

(b) Commencement and Termination of a Trading Halt

(1) In the event NASD determines that a basis exists under Rule 4120A(a) to initiate a trading halt, the commencement of the trading halt will be effective simultaneously with appropriate notice via an administrative message.

(2) Trading in a halted security shall resume upon notice via an administrative message that a trading halt is no longer in effect.

4200A. DEFINITIONS

(a) Unless the context requires otherwise, the terms used in the Rule 4000A and Rule 6000A Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC Rule 11Aa3–1.

(1) "Act" means the Securities Exchange Act of 1934.

(2) "ADF-eligible security" means a Nasdaq National Market, Nasdaq SmallCap Market security and Nasdaq Convertible Debt securities.

(3) ''Nasdaq'' means the facilities operated by The Nasdaq Stock Market, Inc.

(4) ''Nasdaq market maker'' shall have the meaning as defined in Rule 4200.

(5) ''Nasdaq National Market'' or ''NNM'' is a distinct tier of the Nasdaq Stock Market comprised of securities that meet the requirements of and are authorized as a Nasdaq National Market Security.

(6) ''Nasdaq security'' means a security that is listed on Nasdaq.

(7) ''Nasdaq SmallCap Market'' or ''SCM'' is a distinct tier of The Nasdaq Stock Market compromised of securities that meet the requirements of and are authorized as a Nasdaq SmallCap Security.

(8) ''Normal unit of trading'' means 100 shares of a security unless, with respect to a particular security, the market where the security is listed determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's symbol.

(9) ''Registered Reporting ADF ECN'' means a member of NASD that is an electronic communications network (''ECN'') that elects to display orders in NASD's Alternative Display Facility. A member is a Registered Reporting ADF ECN in only those designated securities for which it is registered with NASD. A member shall cease being a Registered Reporting ADF ECN in a designated security when it has withdrawn or voluntarily terminated its quotations in that security on the ADF or when its quotations have been suspended or terminated by action of NASD. This term also shall include an NASD member that is an alternative trading system (''ATS'') that displays orders in NASD's Alternative Display Facility.

(10) ''Registered Reporting ADF Market Maker'' means a member of NASD that is registered as an NASD market maker in a particular designated security and, with respect to that security, holds itself out (by entering quotations in NASD's Alternative Display Facility) as being willing to buy and sell such security for its own account on a regular and continuous basis. A member is a Registered Reporting ADF Market Maker in only those designated securities for which it is registered as an ADF market maker. A member shall cease being a Registered Reporting ADF Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security on the ADF or when its quotations have been suspended or terminated by action of NASD.

(11) ''SEC Rule 100,'' ''SEC Rule 101,'' ''SEC Rule 103,'' and ''SEC Rule 104'' mean the rules adopted by the Commission under Regulation M, and any amendments thereto.

(12) ''Stabilizing bid'' means the terms ''stabilizing'' or to ''stabilize'' as defined in SEC Rule 100.

(13) ''Underwriting Activity Report'' is a report provided by the Market Regulation Department of NASD in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614A, 4619A, and 4623A.

(b) For purposes of Rules 4619A, and 4623A, the following terms shall have the meanings as defined in SEC Rule 100: ''affiliated purchaser,'' ''distribution,'' ''distribution participant,'' ''independent bid,'' ''net purchases,'' ''passive market maker,'' ''penalty bid,'' ''reference security,'' ''restricted period,'' ''subject security,'' and ''syndicate covering transaction.''

4300A. Quote and Order Access Requirements

(a) To ensure that NASD Market Participants comply with their quote and order access obligations as defined below, for each security in which they elect to display a bid and offer (for Registered Reporting ADF Market Makers), or a bid and/or offer (for Registered Reporting ADF ECNs), in the Alternative Display Facility, NASD Market Participants must:

(1) Provide other NASD Market Participants direct electronic access, as defined below; and

(2) Provide NASD member broker-dealers that are not NASD Market Participants direct electronic access, if requested, and allow for indirect electronic access, as defined below. In any event, an NASD Market Participant is prohibited from (A) in any way directly or indirectly influencing or prescribing the prices that their customer broker-dealer may choose to impose for providing indirect access; and (B) precluding or discouraging indirect electronic access, including through the imposition of discriminatory pricing or quality of service with regard to a broker-dealer that is providing indirect electronic access.

(3) Market Participants shall share equally the costs of providing to each other the direct electronic access required pursuant to paragraph (a)(1), unless those Market Participants agree upon another cost-sharing arrangement.

(b) Subject to the terms and conditions contained herein, all NASD Market Participants that display quotations in NASD's Alternative Display Facility must record each item of information described in paragraphs (b)(1) and (2) of this Rule for all orders they receive from another broker-dealer via direct or indirect electronic access, and report this information to NASD as specified below.

(1) NASD Market Participants must record the following information for every order they receive from another broker-dealer via direct or indirect electronic access during the trading day:

(A) Unique Order Identifier

(B) Order Entry Firm (OEID)

(C) Order Side (Buy/Sell)

(D) Order Quantity

(E) Issue Identifier

(F) Order Price

(G) Order Negotiable Flag

(H) Time In Force (i.e. regular hours, entire day, other)

(I) Order Date

(J) Order Time (including seconds)

(K) Minimal Acceptable Quantity (i.e. ANY, all or none (AON), volume)

(L) Market Making Firm (MMID)

(M) Trade-or-Move Flag

The information described in paragraphs (A) through (M) must be reported to NASD within 10 seconds of receipt of the order.

(2) In addition to the information previously provided pursuant to paragraph (b)(1), NASD Market Participants must record the following information, as applicable, for every order received via direct or indirect access from another broker-dealer that has been acted upon or responded to:

(A) Unique Order Identifier (as provided in paragraph (b)(1)(A))

(B) Order Response (i.e. E=Execute, D=Decline, X=Cancel, T=timed out, P=partial, I=Price improvement)

(C) Order Response Time (including seconds)

(D) Quantity

(E) Price

The information described in paragraphs (A) through (E) must be reported to NASD within 10 seconds of any response to or action taken regarding an order. In the event that a member receives and executes an order within 10 seconds, the member may submit a single report that contains the information required in (b)(1) and (b)(2).

(3) Maintaining and Preserving Records

(A) In addition to submitting the information described herein to NASD, each member shall maintain and preserve records of the information

required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a–4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a–4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a–4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a–4(f) and may be maintained and preserved for the required time in that form.

(4) Orders Not Required To Be Recorded

The recording and reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to orders received via ITS or any system operated by a national securities exchange or national securities association.

(5) Method of Transmitting Data

Members shall transmit this information in such form as prescribed by NASD.

(6) Reporting Agent Agreements

(A) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.

(B) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(C) All written documents evidencing an agreement described in paragraph (6)(B) shall be maintained by each party to the agreement.

(D) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.

(7) Withdrawal of Quotations

If an NASD Market Participant knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the member must withdraw its quotations from NASD's Alternative Display Facility until such time that the member is satisfied that its order information is being properly recorded and reported.

(c) NASD Market Participants are required to specify as part of their NASD Alternative Display Facility Workstation Subscriber Agreement the method and terms by which they will comply with the requirements of this Rule. NASD staff will not approve a Market Participant's Subscriber Agreement unless the method and terms provided by the Market Participant are in compliance with this Rule.

(d) Definitions

(1) "Customer broker-dealer" is any broker-dealer that has, or seeks to have, an ongoing relationship with a Market Participant, including an ECN subscriber, for the purposes of executing securities transactions.

(2) "Direct electronic access" means the ability to deliver an order for execution directly against an individual NASD Market Participant's best bid and offer subject to quote and order access obligations, as defined herein, without the need for voice communication, with the equivalent speed, reliability, availability, and cost (as permissible under the federal securities laws, the rules and regulations thereunder, and the NASD Rules), as are made available to NASD Market Participant's own customer broker-dealers or other active customers or subscribers.

(3) "Indirect electronic access" means the ability to route an order through customer broker-dealers of an NASD Market Participant that are not affiliates of NASD Market Participant, for execution against NASD Market Participant's best bid and offer subject to quote and order access obligations, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing the indirect access or other active customers or subscribers. NASD Market Participant's customer broker-dealers providing indirect electronic access shall remain responsible for all orders routed through them as though the orders were the firms' own orders.

(4) "NASD Market Participant" means (a) an NASD ADF Registered Reporting Market Maker, (b) an ATS, (c) or an NASD ADF Registered ECN.

(5) "Best bid and offer" for purposes of this Rule includes the best-priced buy and sell orders of an NASD Market Participant.

(6) "Quote and Order Access Obligations" include the requirements under this Rule, the firm quote obligations under Rule 11Ac1–1 under the Act, and for ADF Registered ECNs, the standards under Rule 11Ac1–1(c)(5)(ii)(A)(2) under the Act, Sections 301(b)(3) through (5) of Regulation ATS and other order access-related regulatory requirements for ATSs, ECNs and market makers. Obligations under this Rule include providing the ability to send or receive Trade-or-Move messages, identifiable as such, as required by Rule 4613A(d) and providing access to any reserved size orders as required by Rule 4623A(c).

(e) Minimum Performance Standards

(1) Direct electronic access provided by a Market Participant must allow the Market Participant the technological ability to respond to an order in two seconds or less. The two-second standard shall be measured from the time an order is received from the broker-dealer sending the order to the time an execution report or notice to decline the order is sent from the Market Participant to the broker-dealer that sent the order. With respect to orders received from other Market Participants, Market Participants must have in place a system that can accomplish turnaround of an order in three or fewer seconds, measured from the time an order is released by a Market Participant until the time an execution report is received by the Market Participant that placed the order. As a precondition to becoming a registered member of NASD Alternative Display Facility, Market Participants must certify to NASD their compliance with this paragraph based on reasonable forecasts of peak volume activity.

(2) In the event that a Market Participant experiences three (3) unexcused system outages during a period of five (5) business days, the Market Participant shall be suspended from quoting in NASD's Alternative Display Facility in all issues for a period of twenty (20) business days. For the purposes of this paragraph, a "system outage" shall mean an inability to post quotations in NASD's Alternative Display Facility or an inability to respond to orders.

(3) Officers of NASD or its subsidiaries designated by the Chief Executive Officer of NASD shall, pursuant to the procedures set forth in paragraph (f) below, have the authority to review any system outage to determine whether the system outage should be excused. An officer may deem a system outage excused upon proof by the Market Participant that the system outage resulted from circumstances not within the control of the Market Participant. The burden shall rest with the Market Participant to demonstrate that a system outage should be excused.

(4) A Market Participant may contact NASD Alternative Display Facility Operations and request that a system outage be deemed excused, whether or not the system outage resulted from

circumstances within the control of the Market Participant; however, if NASD Alternative Display Facility Operations becomes aware of the system outage prior to the Market Participant's request for an excused system outage, NASD Alternative Display Facility Operations may, at its own discretion, deem the system outage to be unexcused, based on the specific facts and circumstances surrounding the outage. In any event, a Market Participant shall be granted no more than five (5) excused system outages within 30 calendar days.

(f) Procedures for Reviewing System Outages

(1) Any Market Participant that seeks to have a system outage reviewed pursuant to paragraph (e)(3) hereof, shall submit a written request, via facsimile or otherwise, to NASD Alternative Display Facility Operations by close of the business day on which the system outage occurs, or the following business day if the system outage occurs outside of normal market hours.

(2) A Market Participant that seeks review of a system outage shall supply any supporting information for a determination under paragraph (e)(3) to NASD staff by the close of business on the day following the system outage.

(3) A Market Participant that seeks review of a system outage shall supply NASD staff with any information requested to make a determination pursuant to paragraph (e)(3).

(4) An officer shall, in accordance with paragraph (e)(3), make a determination whether a system outage is excused by the close of business on the day following the receipt of information supplied pursuant to paragraphs (f)(2) and (f)(3).

(5) A Market Participant may appeal a determination made under paragraph (e)(3) to NASD's Alternative Display Facility Market Operations Review Committee in writing, via facsimile or otherwise, by the close of business on the day a determination is rendered pursuant to paragraph (e)(3). An appeal to the Committee shall operate as a stay of the determination made pursuant to paragraph (e)(3). Once a written appeal has been received, the Market Participant may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the Committee. The Committee shall render a determination by the close of business following the day a notice of appeal is received. The Committee's determination shall be final and binding.

* * * * *

4600A. TRADING IN NASDAQ SECURITIES

4610A. Registration and Other Requirements

4611A. Registration as an ADF Market Maker

(a) Quotations and quotation sizes in Nasdaq securities may be entered into NASD's Alternative Display Facility only by a Registered Reporting ADF Market Maker or other entity approved by NASD to function in a market-making capacity.

(b) An NASD member seeking registration as a market maker in the ADF shall file an application with NASD. The application shall certify the member's good standing with NASD and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Act. It shall be sufficient to obtain registration as a market maker for a member to demonstrate proof that it is a registered Nasdaq market maker in good standing. A member's registration as an ADF market maker shall become effective upon receipt by the member of notice of approval of registration from NASD.

(c) A registered reporting ADF market maker may become registered in an issue by entering a registration request via an NASD terminal or other NASD approved electronic interface with NASD's systems or by contacting NASD Alternative Display Facility Operations. If the requirements of paragraph (b) above are satisfied, registration shall become effective on the day the registration request is entered. It shall be sufficient to obtain registration in an issue for a member to demonstrate proof that it is currently registered in that issue as a Registered Reporting Nasdaq market maker and is in good standing.

(d) A market maker's registration in an issue shall be terminated if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

4612A. Reserved

4613A. Character of Quotations

(a) Two-Sided Quotations

(1) For each Nasdaq security for which a member is a Registered Reporting ADF Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations through NASD's Alternative Display Facility, subject to the procedures for excused withdrawal set forth in Rule 4619A.

(A) A Registered Reporting ADF Market Maker in a security listed on Nasdaq must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a Registered Reporting ADF Market Maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

(B) Minimum Price Variation for Decimal-based Quotations

The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be $0.01. Quotations failing to meet this standard shall be rejected.

(b) Firm Quotations

(1) A Registered Reporting ADF Market Maker that receives an offer to buy or sell from another NASD member shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through NASD's Alternative Display Facility at the time of receipt of any such offer. If a Registered Reporting ADF Market Maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another NASD member, execute a transaction at least at the size displayed.

(2) If a Registered Reporting ADF Market Maker, upon receipt of an offer to buy or sell from another NASD member in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated through NASD's Alternative Display Facility at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such Registered Reporting ADF Market Maker shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of a Registered Reporting ADF Market Maker to execute the offer in an amount greater than its published quotation size shall not constitute a violation of subparagraph (b)(1) of this rule.

(c) Quotations Reasonably Related to the Market

A Registered Reporting ADF Market Maker shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that a Registered Reporting ADF Market Maker's quotations are no longer reasonably related to the prevailing market, NASD may require *the market maker to re-enter its quotations. If a Registered Reporting ADF Market Maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, NASD may suspend the market maker's quotations in one or all securities.*

(1) In the event that a Registered Reporting ADF Market Maker's ability to enter or update quotations is impaired, the Registered Reporting ADF Market Maker shall immediately contact NASD Alternative Display Facility Operations to request the withdrawal of its quotations.

(2) In the event that a Registered Reporting ADF Market Maker's ability to enter or update quotations is impaired and the Registered Reporting ADF Market Maker elects to continue to participate through NASD's Alternative Display Facility, the Registered Reporting ADF Market Maker shall execute an offer to buy or sell received from another NASD member at its quotations as disseminated through NASD's Alternative Display Facility.

(d) Locked and Crossed Markets

(1) A Registered Reporting ADF Market Maker shall not, except under extraordinary circumstances, enter or maintain quotations through NASD's Alternative Display Facility during normal business hours if:

(A) the bid quotation entered is equal to ("lock") or greater than ("cross") the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to ("lock") or less than ("cross") the bid quotation of another market maker entering quotations in the same security.

(2) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening

(A) Locked/Crossed Market Prior to 9:20 a.m.—For locks/crosses that occur prior to 9:20 a.m. Eastern Time, a Registered Reporting ADF Market Maker that is a party to a lock/cross because the Registered Reporting ADF Market Maker either has entered a bid (ask) quotation that locks/crosses another market maker's quotation(s) or has had its quotation(s) locked/crossed by another market maker ("party to a lock/cross") may, beginning at 9:20 a.m. Eastern Time, send a message, making use of direct electronic access in accordance with Rule 4300, of any size, that is at the receiving market maker's quoted price ("Trade-or-Move Message"). Any Registered Reporting ADF Market Maker that receives a Trade-or-Move Message at or after 9:20 a.m. Eastern Time, and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market.

(B) Locked/Crossed Market Between 9:20 and 9:29:59 a.m.

(i) Before a Registered Reporting ADF ECN enters a quote that would lock or cross the market between 9:20 and 9:29:29 a.m. Eastern Time, the ECN must first send, making use of direct electronic access in accordance with Rule 4300, to the market maker or ECN whose quote it would lock or cross a Trade-or-Move Message that is at or superior to the receiving market maker's or ECN's quoted price. An ECN that sends a Trade-or-Move Message during these periods must then wait at least 10 seconds before entering a quote that would lock or cross the market

(ii) If a Registered Reporting ADF Market Maker locks or crosses the market between 9:20 and 9:29:29 a.m. Eastern Time, the Registered Market Maker must then immediately send, making use of direct electronic access in accordance with Rule 4300, to the market maker whose quotes it is locking or crossing a Trade-or-Move message that is at the receiving market maker's or ECNs quoted price.

(iii) Market participants shall be prohibited from entering a quote that would lock or cross the market between 9:29:30 and 9:29:59.

(C)(i) In the case of securities included in the Nasdaq 100 Index or the S&P 400 Index, a Trade-or-Move Message must be for at least 10,000 shares (in instances where there are multiple market makers to a lock/cross, the locking/crossing market maker must send a message to each party to the lock/cross and the aggregate size of all such messages must be at least 10,000 shares); provided, however, that if a market participant is representing an agency order, the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 10,000 shares.

(ii) In the case of all other securities, a Trade-or-Move Message must be for at least 5,000 shares (if multiple market makers would be locked/crossed, each one must receive a Trade-or-Move Message and the aggregate size of all such messages must be at least 5,000 shares); provided, however, that if a market participant is representing an agency order, the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 5,000 shares.

(D) A market maker that receives a Trade-or-Move Message must, within 10 seconds of receiving such message, either fill the incoming Trade-or-Move Message for the full size of the message, or move its bid down (offer up) by a quotation increment that restores or maintains an unlocked/uncrossed market.

(E) A Registered Reporting ADF Market Maker that sends a Trade-or-Move Message pursuant to this rule must append to the message a symbol indicating that it is a Trade-or-Move Message.

(F) For the purposes of this rule "agency order" shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an "institutional account" as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.

(3) Obligations Regarding Locked/Crossed Market Conditions During Market Hours

A Registered Reporting ADF Market Maker, prior to entering a quotation that locks or crosses another quotation, must make reasonable efforts to avoid such locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed. Reasonable efforts shall include making use of direct electronic access in accordance with Rule 4300A. Pursuant to the provisions of paragraph (b) of this Rule, a Registered Reporting ADF Market Maker whose quotations are causing a locked or crossed market is required to execute transactions at its quotations as displayed through NASD's Alternative Display Facility at the time of receipt of any order.

(4) Except as indicated in subsection (2)(B), for purposes of this Rule 4613A(d), the term "Registered Reporting ADF Market Maker" shall include:

(A) any NASD member that enters into an ECN, as that term is defined in SEC Rule 11Ac1–1(a)(8), an order that is displayed through NASD's Alternative Display Facility;

(B) any NASD member that operates the ECN when the order being displayed has been entered by a person or entity that is not an NASD member;

(C) any NASD member that enters into an ATS, as that term is defined in SEC Regulation ATS, a priced order that is displayed through NASD's Alternative Display Facility; and

(D) any NASD member that operates the ATS when the priced order being displayed has been entered by a person or entity that is not an NASD member.

(e) Other Quotation Obligations

(1) Members that display priced quotations on a real-time basis for Nasdaq securities in two or more market centers that permit quotation updates on a real-time basis must display the same priced quotations for the security in each market center.

(2) A member that is registered as a market maker in a Nasdaq security shall be obligated to have available in close proximity to NASD's Alternative Display Facility terminal at which it makes a market in a Nasdaq security a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of other market makers trading and quoting that Nasdaq security.

IM–4613A. Autoquote Policy

(a) General Prohibition—NASD bans the automated update of quotations by market makers through NASD's Alternative Display Facility. Except as provided below, this policy prohibits systems known as ''autoquote'' systems from effecting automated quote updates or tracking of inside quotations through NASD's Alternative Display Facility. This ban is necessary to offset the negative impact on the capacity and operation of NASD's Alternative Display Facility that may be caused by certain autoquote techniques that track changes to the inside quotation and automatically react by generating another quote to keep the market maker's quote away from the best market.

(b) Exceptions to the General Prohibition—Automated updating of quotations is permitted when: (1) the update is in response to an execution in the security by that firm (such as execution of an order that partially fills a market maker's quotation size), and is in compliance with Rule 4613A(b)(2); (2) it requires a physical entry (such as a manual entry to the market maker's internal system which then automatically forwards the update to Nasdaq); or (3) the update is to reflect the receipt, execution, or cancellation of a customer limit order.

4614A. Reserved

4615A. Reserved

4616A. Reserved

4617A. Normal Business Hours

A Registered Reporting ADF Market Maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. A Registered Reporting ADF Market Maker may remain open for business on a voluntary basis for any period of time between 4:00 p.m. Eastern time and 6:30 p.m. Eastern Time. Registered Reporting ADF Market Makers whose quotes are open after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all NASD Rules that are not by their express terms, or by an official interpretation of NASD, inapplicable to any part of the 4:00 p.m. to 6:30 p.m. Eastern Time period.

4618A. Clearance and Settlement

(a) A market maker shall clear and settle transactions effected on the ADF in Nasdaq securities that are eligible for net settlement through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions in Nasdaq securities may be settled ''ex-clearing'' provided that both parties to the transaction agree.

4619A. Withdrawal of Quotations and Passive Market Making

(a) A Registered Reporting ADF Market Maker that wishes to withdraw quotations in a security or have its quotations identified as the quotations of a passive market maker shall contact NASD Alternative Display Facility Operations to obtain excused withdrawal status prior to withdrawing its quotations or identification as a passive market maker. If a Registered Reporting ADF Market Maker also is a Registered Reporting Nasdaq Market Maker, it must obtain excused withdrawal status in both facilities for the same time period. Withdrawals of quotations or identifications of quotations as those of a passive market maker shall be granted by NASD Alternative Display Facility Operations only upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the market maker's control may be granted for up to five (5) business days, unless extended by NASD Alternative Display Facility Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if notice is received by NASD one business day in advance and is approved by NASD. Excused withdrawal status based on vacation may be granted only if:

(1) the request for withdrawal is received by NASD one business day in advance, and is approved by NASD; and

(2) the request includes a list of the securities for which withdrawal is requested.

(c) Excused withdrawal status may be granted to a Registered Reporting ADF Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611A, above, provided the Registered Reporting ADF Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(d) Excused withdrawal status may be granted to a member that experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system).

(e) Excused withdrawal status may be granted to a Registered Reporting ADF Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, thereby terminating its registration as a Registered Reporting ADF Market Maker; provided however, that if NASD finds that the Registered Reporting ADF Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620A.

(f) Excused withdrawal status or passive market maker status may be

granted to a Registered Reporting ADF Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rules 101, 103, or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (f)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations, or that includes a request on behalf of each market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) that its quotations be identified as those of a passive market maker and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each Registered Reporting ADF Market Maker that it has been identified as a distribution participant or an affiliated purchaser to NASD Alternative Display Facility Operations and that its quotations will be automatically withdrawn or identified as passive market maker quotations, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies NASD Alternative Display Facility Operations as required by subparagraph (f)(2), below.

(2) A Registered Reporting ADF Market Maker that has been identified to NASD Alternative Display Facility Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify NASD Alternative Display Facility Operations and the manager of its intention not to participate in the prospective distribution or not to act as a passive market maker in order to avoid having its quotations withdrawn or identified as the quotations of a passive market maker.

(3) If a Registered Reporting ADF Market Maker that is a distribution participant withdraws its quotations in a Nasdaq security in order to comply with the net purchases limitation of SEC Rule 103 or with any other provision of SEC Rules 101, 103, or 104 and promptly notifies NASD Alternative Display Facility Operations of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit NASD from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact NASD Alternative Display Facility Operations to obtain an excused withdrawal as required by subparagraph (a) of this Rule.

(4) The quotations of a passive market maker shall be identified on NASD Alternative Display Facility Data Systems as those of a passive market maker.

(5) A member acting as a manager (or in a similar capacity) of a distribution subject to subparagraph (f)(1) of this Rule shall submit a request to NASD Alternative Display Facility Operations and the Market Regulation Department of NASD to rescind the excused withdrawal status or passive market making status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request referenced in this subparagraph may be submitted on the Underwriting Activity Report.

(g) NASD's Alternative Display Facility Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal pursuant to this Rule, or the conditions imposed on their reentry.

4620A. Voluntary Termination of Registration

A Registered Reporting ADF Market Maker may voluntarily terminate its registration in a security by (1) withdrawing its quotations from NASD's Alternative Display Facility and not re-entering its quotations for five (5) minutes, or (2) failing to re-enter quotations within thirty (30) minutes of the end of a trading halt. A Registered Reporting ADF Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days, absent an excused withdrawal specified in Rule 4619A. Withdrawal from participation as a Registered Reporting ADF Market Maker in NASD's Alternative Display Facility shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a Registered Reporting ADF Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and thereby terminates its registration as a market maker in Nasdaq securities may register as a market maker at any time after a clearing arrangement has been reestablished.

4621A. Suspension and Termination of Quotations by NASD Action

NASD may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Registered Reporting ADF Market Maker's authority to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

4622A. Termination of NASD Alternative Display Facility Data System Service

NASD may, upon notice, terminate NASD Alternative Display Facility Data System service in the event that a Registered Reporting ADF Market Maker fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by NASD.

4623A. Alternative Trading Systems

(a) NASD may provide a means to permit alternative trading systems ("ATSs"), as such term is defined in Regulation ATS, and electronic communications networks ("ECNs"), as such term is defined in SEC Rule 11Ac1–1(a)(8), to comply with the display requirements of SEC Rule 301(b)(3) and the terms of the ECN display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii)(A) and (B) ("ECN display alternatives"). NASD will not facilitate compliance with access requirements, which are the responsibility of Market Participants under Rule 4300A.

(b) An ATS or ECN that seeks to use NASD-provided means to comply with SEC Rule 301(b)(3) and/or the ECN display alternatives shall:

(1) demonstrate to NASD that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule;

(2) be registered as an NASD member;

(3) enter into and comply with the terms of an NASD Alternative Display

Facility Workstation Subscriber Agreement, as amended for ATSs and ECNs;

(4) agree to provide for NASD's dissemination in the quotation data made available to quotation vendors the prices and sizes of NASD Registered Market Maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in NASD's Alternative Display Facility), at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with NASD Alternative Display Facility Operations as an ATS or ECN; and

(5) comply with Rule 4300A.

(c) When an NASD member attempts to access electronically an ATS or ECN-displayed order by sending an order that is larger than the ATS' or ECN's Nasdaq-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the NASD member that operates the ATS or ECN shall execute such delivered order:

(1) up to the size of the delivered order, if the ATS or ECN order (including the reserved size and displayed portions) is the same size or larger than the delivered order; or

(2) up to the size of the ATS or ECN order (including the reserved size and displayed portions), if the delivered order is the same size or larger than the ATS or ECN order (including the reserved size and displayed portions).

No ATS or ECN operating through NASD's Alternative Display Facility pursuant to this Rule is permitted to provide a reserved-size function unless the size of the order displayed through NASD's Alternative Display Facility is 100 shares or greater. For purposes of this Rule, the term "reserved size" shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

4624A. Reserved

4625A. Reserved

4630A. Reporting Transactions in Nasdaq Securities

This Rule 4630A Series governs the reporting by members of ADF-eligible securities through NASD's Trade Reporting and Comparison Service ("TRACS"). The Rule 5400 Series provides the rules for determining which member must report a trade and whether a trade must be reported to TRACS pursuant to this Rule 4630A Series. Participation in the trade reporting function of TRACS is mandatory for all members that have a trade reporting obligation through TRACS under the Rule 5400 Series or that choose to report transactions through TRACS. Participation in the trade reporting function of TRACS is conditioned upon (a) execution of, and continuing compliance with, a TRACS trade reporting Participant Application Agreement and (b) maintenance of the physical security of the equipment on the premises of the member to prevent unauthorized entry of information into the trade reporting function of TRACS.

4631A. Reserved

4632A. Transactions Reported by Members

(a) When and How Transactions are Reported

Members shall comply with Rule 5430(a) for determining when and how transactions are reported.

(b) Which Party Reports Transaction

Members shall comply with Rule 5430(b) for determining which party reports a transaction.

(c) Information To Be Reported—Two Party Trade Reports

(1) A two party trade report is a last sale report that denotes a trade between one Reporting NASD member and one Non-Reporting Member. The Reporting NASD Member is denoted as the ("MMID") side of the trade report and the Non-Reporting Member is denoted as the ("OEID") side of the report.

(2) Each two party last sale report submitted by a reporting nasd member should contain:

(A) Security identification symbol (SECID);

(B) Number of shares or bonds;

(C) Price of the transaction as required by paragraph (h) below;

(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, sell short exempt, or cross;

(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, sell short, or sell short exempt;

(F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is a principal, riskless principal, or agent;

(G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a principal, riskless principal, or agent;

(H) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:

(i) an order identifier, meeting such parameters as may be prescribed by NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1));

(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.

(I) Execution time for any transaction not reported within 90 seconds of execution;

(J) The market participant identifier of the Reporting Member and the Non-Reporting Member;

(K) Reporting Member clearing broker;

(L) Reporting Member Executing Broker in case of a "give up;"

(M) Non-Reporting Member Executing Broker;

(N) Non-Reporting Member introducing broker in case of a "give up;"

(O) Non-Reporting Member clearing broker;

(P) A designated symbol denoting whether the trade report should be published;

(Q) A designated symbol denoting whether the trade report should be compared in TRACS;

(R) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(S) If the contra side to the trade report is a Non-NASD member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.

(T) For two party trade reports submitted pursuant to an Automated Give Up ("AGU") arrangement or a Qualified Service Representative ("QSR") Agreement, disclosure of the information set forth in subparagraphs (e)(2)(E) and (G) is mandatory.

(3)(A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (e)(2)(D), (E), (F), (G), or (H)(i) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

(i) Short sale indicator;

(ii) Volume related to short sale indicator change;

(iii) Capacity Indicator;

(iv) Volume related to capacity change; or

(v) Branch Sequence Number

(B) The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.

(C) Each trade report addendum must contain the following information:

(i) Reference number for the original trade report that is being amended or modified;

(ii) OEID side or MMID side flag; and

(iii) MPID.

(d) Information To Be Reported—Three Party Trade Reports

(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs may submit three party trade reports. Riskless principal trades also may be submitted by reporting members as three party trade reports.

(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:

Transaction Information

(A) Security Identification Symbol (SECID);

(B) Number of shares or bonds;

(C) Price of the transaction as required by paragraph (h) below;

(D) Execution time for any transaction not reported within 90 seconds of execution;

(E) The market participant identifier of the Reporting Member and the two Non-Reporting Members;

(F) A designated symbol denoting whether the trade should be published;

(G) For any transaction in an order for which a member has recording and reporting obligations under NASD Rules 6954 and 6955, the trade report must include:

(i) an order identifier, meeting such parameters as may be prescribed by NASD, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)). This order number must associate both the buy side and sell side OATS Execution Reports to the TRACS report;

(ii) The time of execution. This information must be reported regardless of the period of time between execution of the trade and the NASD report.

MMID Side

(H) All three party trade reports from ECNs must be marked as agency cross transactions;

(I) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell, sell short, or sell short exempt transaction;

(J) Reporting Member clearing broker;

(K) Reporting Member Executing Broker in the case of a ''give up''; Buy Side OEID

(L) Buy Side OEID executing broker;

(M) Buy Side OEID introducing broker in case of a ''give up'';

(N) Buy Side OEID clearing broker;

(O) If known, a designated symbol denoting whether the trade, from the Buy Side OEID's perspective, is as principal, riskless principal, or agent;

(P) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(Q) If the Buy Side OEID is a non-NASD member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;

(R) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;

Sell Side OEID

(S) Sell Side OEID executing broker;

(T) Sell Side OEID introducing broker in case of a ''give up'';

(U) Sell Side OEID clearing broker;

(V) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;

(W) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell, sell short, or sell short exempt transaction;

(X) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(Y) If the Sell Side OEID is a non-NASD Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;

(Z) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS;

(AA) If the transaction between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraph (f)(2)(O) is mandatory; and

(BB) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraphs (f)(2)(V) and (W) is mandatory.

(3)(A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (f)(2)(G)(i), (I), (O), (V), or (W) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

(i) Short sale indicator;

(ii) Volume related to short sale indicator change;

(iii) Capacity Indicator;

(iv) Volume related to capacity change; or

(v) Branch Sequence Number

(B) The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.

(C) Each trade report addendum must contain the following information:

(i) Reference number for the original trade report that is being amended or modified;

(ii) OEID side or MMID side flag; and

(iii) MPID.

(e) Procedures for Reporting Price and Volume

(1) Members that are required, or have the option, to report transactions pursuant to paragraph (d) above shall transmit last sale reports in the following manner:

(A) For agency transactions, report the number of shares (or bonds) and the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;

REPORT 100 shares at 40.

(B) For dual agency transactions, report the number of shares (or bonds) only once, and report the price excluding the commission charged.

Example:

SELL as agent 100 shares at 40 less a commission of $12.50;

BUY as agent 100 shares at 40 plus a commission of $12.50;

REPORT 100 shares at 40.

(C)(i) For principal transactions, except as provided below, report each

purchase and sale transaction separately and report the number of shares (or bonds) and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares (or bonds) involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

Example:

BUY as principal 100 shares from another member at 40 (no mark-down included);
REPORT 100 shares at 40.

Example:

BUY as principal 100 shares from a customer at 39.85 which includes a .15 mark-down from prevailing market at 40;
REPORT 100 shares at 40.

Example:

SELL as principal 100 shares to a customer at 40.15, which includes a .15 mark-up from the prevailing market of 40;
REPORT 100 shares at 40.

Example:

BUY as principal 10,000 shares from a customer at 39.75, which includes a .25 mark-down or service charge from the prevailing market of 40;
REPORT 10,000 shares at 40.

(ii) Exception: A "riskless" principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one three party transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to NASD:

a. The member with the obligation to report the transaction pursuant to paragraph (d) above must submit a last sale report for the initial leg of the transaction.

b. Regardless of whether a member has a reporting obligation pursuant to paragraph (d) above, the firm must submit, for the offsetting, "riskless" portion of the transaction, either:

1. a clearing-only report with a capacity indicator of "riskless principal," if a clearing report is necessary to clear the transaction; or

2. a non-tape, non-clearing report with a capacity indicator of "riskless principal," if a clearing report is not necessary to clear the transaction.

Example:

SELL as a principal 100 shares to another member at 40 to fill an existing order;
BUY as principal 100 shares from a customer at 40 minus a mark-down of $12.50;
REPORT 100 shares at 40 by submitting to NASD either a single trade report marked with a "riskless principal" capacity indicator or by submitting the following reports:

3. where required by this Rule, a tape report marked with a "principal" capacity indicator; and

4. either a non-tape, non-clearing report or a clearing-only report marked with a "riskless principal" capacity indicator.

(D) For transactions that are executed at a price different from the current market when the execution is based on a prior reference point in time, members shall append to the transaction report a trade report modifier designated by NASD and shall include in the transaction report the prior reference time.

Example:

At 9:45 a.m., a member discovers that a customer's order to BUY 100 shares at the opening price has not been executed.
The member executes the customer's order at 9:45 a.m. at the opening price (40). Current market is 41.
REPORT 100 shares at 40 and append the .PRP modifier with the time 9:30.

(f) Aggregation of Transaction Reports

(1) Under the following conditions, individual executions of orders in a security at the same price may be aggregated, for transaction reporting purposes, into a single transaction report. Individual transactions in convertible debt securities cannot be aggregated pursuant to this paragraph.

(A) Orders received prior to the opening of the reporting member's market in the security and simultaneously executed at the opening. Also, orders received during a trading or quotation halt in the security and executed simultaneously when trading or quotations resume. In no event shall a member delay its opening or resumption of quotations for the purpose of aggregating transactions.

Example:

A firm receives, prior to its market opening, several market orders to sell which total 10,000 shares. All such orders are simultaneously executed at the opening at a reported price of 40.
REPORT 10,000 shares at 40.

(B) Simultaneous executions by the member of customer transactions at the same price, e.g., a number of limit orders being executed at the same time when a limit price has been reached.

Example:

A firm has several customer limit orders to sell which total 10,000 shares at a limit price of 40. That price is reached and all such orders are executed simultaneously.
REPORT 10,000 shares at 40.

(C) Orders relayed to the trading department of the reporting member for simultaneous execution at the same price.

Example:

A firm purchases a block of 50,000 shares from an institution at a reported price of 40.
REPORT 50,000 at 40.
Subsequently, one of the firm's branch offices transmits to the firm's trading department for execution customer buy orders in the security totaling 12,500 shares at a reported price of 40.
REPORT 12,500 at 40.
Subsequently, another branch office transmits to the firm's trading department for execution customer buy orders totaling 15,000 shares in the security at a reported price of 40.
REPORT 15,000 at 40.

Example:

Due to a major change in market conditions, a firm's trading department receives from a branch office for execution customer market orders to sell totaling 10,000 shares. All are executed at a reported price of 40.
REPORT 10,000 at 40.

(D) Orders received or initiated by the reporting member that are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in

anticipation of aggregating the transaction with other transactions. The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.

Examples:

A reporting member receives and executes the following orders at the following times and desires to aggregate reports to the maximum extent permitted under this Rule.

First Example

11:01:00 500 shares at 40
11:01:05 500 shares at 40
11:01:10 9,000 shares at 40
11:01:15 500 shares at 40
REPORT 10,500 shares at 40 within ninety seconds of 11:01.

Second Example

11:01:00 100 shares at 40
11:01:10 11,000 shares at 40
11:01:30 300 shares at 40
REPORT 400 shares within ninety seconds of 11:01 and 11,000 shares within ninety seconds of 11:01:10 (individual transactions of 10,000 shares or more must be reported separately).

Third Example

11:01:00 100 shares at 40
11:01:15 500 shares at 40
11:01:30 200 shares at 40
11:02:30 400 shares at 40
REPORT 800 shares at 40 within ninety seconds of 11:01 and 400 shares at 40 within ninety seconds of 11:02:30 (the last trade is not within sixty seconds of the first and must, therefore, be reported separately).

(2) The reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by NASD.

(g) Reporting Transactions on Form T

All Reporting NASD Members required (or that elect) to report transactions to NASD's Alternative Display Facility shall report, as soon as practicable to NASD's Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to NASD's Alternative Display Facility is not possible (e.g., the ticker symbol for the security is no longer available, a market participant identifier is no longer active, or NASD will not accept the date of execution because NASD's Alternative Display Facility was closed on that date). Transactions that can be reported to NASD, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

(h) Trade Tickets

All trade tickets for transactions in Nasdaq securities shall be time-stamped at the time of execution.

(i) Special Trade Indicator

A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and as-of trades.

(j) Clearing Indicators

A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement ("AGU"); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement ("QSR").

(k) Transactions Not To Be Reported To NASD

The following types of transactions effected by NASD members shall not be reported to TRACS for publication purposes:

(1) odd-lot transactions;

(2) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than "shelf distributions") or of an unregistered secondary distribution;

(3) transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(4) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security (e.g., to enable the seller to make a gift);

(5) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

(l) Dissemination of Transaction Reports in Convertible Debt Securities

For surveillance purposes, NASD will collect and process trade reports for all transactions in convertible debt securities listed on Nasdaq and effected through NASD's Alternative Display Facility. On a real-time basis, NASD will disseminate to members and the public through NASD, and through securities information processors, transactions in convertible debt securities reported to it equaling 99 bonds or less.

* * * * *

5400. Nasdaq Stock Market and Alternative Display Facility Trade Reporting

5410. Applicability

(a) For a period of time, NASD will operate two facilities for collecting trade reports for executions in Nasdaq National Market, Nasdaq SmallCap Market, and Nasdaq Convertible Debt securities ("designated securities"): The Nasdaq Stock Market and the Alternative Display Facility ("ADF"). Nasdaq will continue to operate the Automated Confirmation Transaction Service ("ACT"), and NASD, through the ADF, will operate Trade Reporting and Comparison Service ("TRACS"). This Rule 5400 Series establishes the rules for determining which member must report a trade and whether a trade must be reported to ACT, pursuant to the Rule 4630, 4640, 4650 and 6100 Series or TRACS, pursuant to the Rule 4630A and 6100A Series.

(b) The requirements of this Rule 5400 Series are in addition to the trade reporting requirements contained in Rule Series 4630, 4640, 4650, 6100, 4630A and 6100A Series.

5420. Definitions

(a) Terms used in this Rule 5400 Series shall have the meaning as defined in the NASD's By-Laws and Rules, SEC Rule 11Aa3–1, and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.

(b) "Automated Confirmation Transactions Service" or "ACT" is the service that, among other things, accommodates reporting and dissemination of last sale reports in designated securities.

(c) "Registered Reporting *Nasdaq* Market Maker" means a member of [the Association which] *NASD that* is registered as a Nasdaq market maker in a particular designated security. A member is a Registered Reporting *Nasdaq* Market Maker in only those designated securities for which it is registered as a *Nasdaq* market maker. A member shall cease being a Registered Reporting *Nasdaq* Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security or when its quotations have been suspended or terminated by action of *NASD* [the Association].

(d) "Non-Registered Reporting Member" means a member of [the Association which] *NASD that* is not a

Registered Reporting *Nasdaq* Market Maker *nor a Registered Reporting ADF Market Maker.*

(e) ''Registered Reporting ADF Market Maker'' means a member of NASD that is registered as an Alternative Display Facility (''ADF'') market maker in a particular designated security. A member is a Registered Reporting ADF Market Maker in only those designated securities for which it is registered as an ADF market maker. A member shall cease being a Registered Reporting ADF Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security on the ADF or when its quotations have been suspended or terminated by action of NASD.

(f) ''Trade Reporting and Comparison Service'' or ''TRACS'' is the service offered to those members that participate in the ADF that accommodates last sale reporting and dissemination and trade comparison of transactions in designated securities.

5430. Transaction Reporting

(a) When and How Transactions are Reported.

(1) Registered Reporting *Nasdaq* Market Makers *and Registered Reporting ADF Market Makers* shall, within 90 seconds after execution, transmit [through ACT] last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(2) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT *or TRACS, as applicable,* or if ACT *or TRACS* is unavailable due to system or transmission failure, by telephone to Market Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution.

(3) Non-Registered Reporting Members shall report weekly to the Market Operations Department, on a form designated by the Board of Governors, last sale reports of transactions in designated securities which are not required to be reported under subparagraph (2) or (4).

(4) Transaction Reporting Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be *reported* [transmitted through ACT] within 90 seconds after execution and shall be designated as ''.T'' trades to denote their execution outside normal market hours. Additionally, last sale reports of transactions in designated securities executed between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time shall be *reported* [transmitted through ACT] within 90 seconds after execution; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ''.T'' trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.

(B) Last sale reports of transactions in designated securities executed outside the hours of 8:00 a.m. and 6:30 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be *reported* [transmitted through ACT] between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date, be designated as ''.T'' trades to denote their execution outside normal market hours, and be accompanied by the time of execution. The party responsible for reporting on trade date, the information to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be *reported* [transmitted through ACT] on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time, be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution. [The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below.]

(5) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission into ACT *or TRACS* is not possible (*e.g.,* the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported into ACT *or TRACS,* whether on trade date or on a subsequent date on an ''as of'' basis (T+N), shall not be reported on Form T.

(6) All members shall report transactions occurring at prices based on average-weighting, or other special pricing formulae, [to Nasdaq] using a special indicator[, as] designated by *NASD* [the Association] and set out in the Symbol Directory.

(7) All trade tickets for transactions in eligible securities shall be time-stamped at the time of execution.

(8) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.

(9) All members shall append a trade report modifier as designated by *NASD* [the Association] to transaction reports that reflect a price different from the current market when the execution is based on a prior reference point in time, which shall be accompanied by the prior reference time.

(b) Which Party Reports Transaction *and to Which Facility*

(1) In transactions between two Registered Reporting *Nasdaq* Market Makers, [only] the member representing the sell side shall report *the trade using ACT.*

(2) In transactions between a Registered Reporting *Nasdaq* Market Maker and a Non-Registered Reporting Member, [only] the Registered Reporting *Nasdaq* Market Maker shall report *the trade using ACT.*

(3) In transactions between two Non-Registered Reporting Members, [only] the member representing the sell side shall report *the trade using ACT or TRACS.*

(4) In transactions between a member and a customer, the member shall report[.] *as follows:*

(A) A Registered Reporting Nasdaq Market Maker shall report the trade using ACT;

(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS; and

(C) A Non-Registered Reporting Member shall report the trade using ACT or TRACS.

(5) In transactions between two Registered Reporting ADF Market Makers, the member representing the sell side shall report the trade using TRACS.

(6) In transactions between a Registered Reporting ADF Market Maker and a Non-Registered Reporting Member, the Registered Reporting ADF Market Maker shall report the trade using TRACS.

(7) In transactions between a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF

Market Maker, the member representing the sell side shall report as follows:

(A) A Registered Reporting Nasdaq Market Maker shall report the trade using ACT; and

(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS.

(8) If a member simultaneously is a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, and has the trade reporting obligation pursuant to paragraphs (1), (2), (4), (5), (6), or (7), the member can report the trade using either ACT or TRACS, unless the trade is executed using ACES; the Nasdaq National Market Execution System (''NNMS''); the SelectNet Service; the SmallCap Small Order Execution System (''SOES''); or the Primex Auction System (''Primex''). A trade executed using ACES must be reported using ACT, and trades executed using NNMS, SelectNet, SOES, or Primex will be reported to ACT automatically.

* * * * *

6000. NASD SYSTEMS AND PROGRAMS

6100. AUTOMATED CONFIRMATION TRANSACTION SERVICE (ACT)

6110. Definitions

(a) through (l) No Change.

(m) The term ''Reportable ACT Transaction'' shall mean [all] inter-dealer transactions, including those for less than one round lot, in an ACT eligible security, and shall also include [all] transactions that are required *or eligible* to be submitted *utilizing ACT* [to the Association for trade reporting purposes] pursuant to the Rule 4630, 4640, 4650, *5400, 6400,* 6600, and 6900 Series.

(n) through (p) No Change.

6120. Participation in ACT

(a) Mandatory Participation for Clearing Agency Members

(1)(*A*) *Participation in ACT is mandatory for all members that execute transactions using the Nasdaq National Market Execution System, the SelectNet Service, the Primex Auction System, the SmallCap Small Order Execution System; ACES; the Computer Assisted Execution System, and the Intermarket Trading System/Computer Assisted Execution System.*

(*B*) [Pursuant to Article VII, Section 1(a)(vi) and (vii) of the By-Laws,] *P*[p]articipation in ACT is mandatory for [all brokers that are] members *that are participants* of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for [all brokers] *members* that have a clearing arrangement with such a broker, *unless a member subscribes to TRACS.* Such participation *in ACT* shall include the reconciliation of all over the counter clearing agency eligible transactions.

(2) through (6) No Change.

(b) No Change.

* * * * *

6130. Trade Report Input

(a) Reportable ACT Transactions

Members shall utilize ACT to report [All] transactions [in eligible securities] *that are required to be* [shall be] reported to [ACT] *Nasdaq pursuant to the Rule Series 4630, 4640, 4650, 5430, 6400, 6500 and 6600 Series,* including executions of less than one round lot if those executions are to be compared and locked-in. *Members may utilize ACT to report transactions that are eligible to be reported to Nasdaq pursuant to Rule 5430, including executions of less than one round lot if those executions are to be compared and locked-in.* All trades that are reportable transactions will be processed through the National Trade Reporting System; however, only those trades that are subject to regular way settlement and are not already locked-in trades will be compared and locked-in through ACT. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in ACT or reported to NSCC. All transactions in Direct Participation Program securities shall be reported to ACT pursuant to the Rule 6900 Series as set forth therein.

(b) When and How Trade Reports are Submitted to ACT

ACT Participants shall transmit trade reports to *ACT* [the system] for transactions in Nasdaq securities within 90 seconds after execution, or shall utilize the Browse function in ACT to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

(c) Which Party Inputs Trade Reports to ACT

ACT Participants [Both parties executing a transaction] shall, subject to the input requirements below, either input trade reports into the ACT system or utilize the Browse feature to accept or decline a trade within the applicable time-frames as specified in paragraph (b) of this Rule. Trade data input obligations are as follows:

(1) through (13) No Change.

(e) No Change.

* * * * *

6000A. NASD ADF SYSTEMS AND PROGRAMS

6100A. TRACS TRADE COMPARISON SERVICE

6110A. Definitions

(a) The term ''Browse'' shall mean the function of TRACS that permits a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the TRACS Users Guide.

(b) The term ''Clearing Broker/Dealer'' or ''Clearing Broker'' shall mean the member firm that has been identified in the TRACS system as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.

(c) The term ''Correspondent Executing Broker/Dealer'' or ''Correspondent Executing Broker'' shall mean the member firm that has been identified in the TRACS system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.

(d) The term ''Introducing Broker/Dealer'' or ''introducing broker'' shall mean the member firm that has been identified in the TRACS system as a party to the transaction, but does not execute or clear trades.

(e) The term ''Participant'' shall mean any member of NASD in good standing that uses the TRACS system as an NASD ADF Registered Reporting Market Maker according to the requirements of Rule 4611A , an ECN registered in accordance with Rule 4623A, an Order Entry Firm, or a clearing broker/dealer, correspondent executing broker/dealer, or introducing broker/dealer.

(f) The terms ''Participant,'' ''TRACS Order Entry Firm,'' ''correspondent executing broker/dealer,'' ''correspondent executing broker,'' ''introducing broker/dealer,'' ''introducing broker,'' ''clearing broker/dealer,'' and ''clearing broker'' shall also include, where appropriate, the Non-Member Clearing Organizations listed in Rule 6120A(a)(5) below and their qualifying members.

(g) The term ''Parties to the Transaction'' shall mean the executing brokers, introducing brokers and clearing brokers, if any.

(h) The term ''Reportable TRACS Transaction'' shall mean those transactions in a TRACS eligible security that are required, or are eligible, to be submitted utilizing TRACS pursuant to the Rule 4630A, 5400 and 6400A Series. The term also shall include transactions in TRACS eligible

securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.

(i) The term "Reporting Party" shall mean the TRACS Participant that is required to input the trade information, according to the requirements in NASD Rule 4630A Series.

(j) The term "Trade Reporting and Comparison Service" or "TRACS" shall mean the automated system owned and operated by NASD as part of the Alternative Display Facility that reports trades and compares trade information entered by TRACS participants and submits "locked-in" trades to Depository Trust Clearing Corporation (DTCC) for clearance and settlement; transmits reports of the transactions automatically to the Securities Information Processor, if required, for dissemination to the public and the industry; and provides participants with monitoring capabilities to facilitate participation in a "locked-in" trading environment.

(k) The term "TRACS ECN" shall mean a member of NASD that is an electronic communications network ("ECN") that elects to display orders in NASD's Alternative Display Facility pursuant to Rule 4623A and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. This term shall also include an NASD member that is an alternative trading system ("ATS") that displays orders in NASD's Alternative Display Facility pursuant to Rule 4623A and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(l) The term "TRACS Eligible Security" shall mean Nasdaq National Market, Nasdaq SmallCap Market security and Nasdaq Convertible Debt securities.

(m) The term "TRACS Market Maker" shall mean a member of NASD that is registered as an NASD ADF Market Maker and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(n) The term "TRACS Order Entry Firm" shall mean a member of NASD that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

6120A. Participation in TRACS Trade Comparison Feature by Participants in the Alternative Display Facility

The following Rules 6120A through 6190A apply to members that effect transactions in ADF-eligible securities through the Alternative Display Facility.

(a) Mandatory Participation for Clearing Agency Members

(1) Participation in TRACS trade comparison feature is mandatory for any NASD member that effects transactions in ADF-eligible securities through the Alternative Display Facility, which are not locked-in and sent directly to Deposit Trust Clearing Corporation ("DTCC") by that member. All members, whether or not they must participate in the TRACS trade comparison feature, must comply with the trade reporting requirements described in the Rule 4630A Series.

(2) Participation in the TRACS trade comparison feature as a Market Maker shall be conditioned upon the TRACS Market Maker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;

(C) registration as an NASD ADF Market Maker or ECN for Nasdaq securities pursuant to Rule 4611A , if applicable, and compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Market Maker to prevent unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Market Maker, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the TRACS trade comparison feature as an Order Entry Firm shall be conditioned upon the Order Entry Firm's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Order Entry Firm to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Order Entry Firm, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(4) Participation in the TRACS trade comparison feature as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Clearing Broker to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(5) Participation in the TRACS trade comparison feature as an ECN shall be conditioned upon the ECN's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of an effective clearing arrangement with a member of, a clearing agency registered pursuant to the Act;

(C) compliance with all applicable rules and operating procedures of NASD and the Commission;

(D) maintenance of the physical security of the equipment located on the premises of the ECN to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS ECN, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(6) Each TRACS trade comparison Participant shall be obligated to inform NASD of non-compliance with any of the participation requirements set forth above.

(b) Participant Obligations in TRACS

(1) Access to TRACS

Upon execution and receipt by NASD of the TRACS trade comparison Participant Application Agreement, a TRACS trade comparison Participant may commence input and validation of trade information in TRACS eligible securities. TRACS trade comparison Participants may access the service via NASD terminals or Workstations or through computer interface during the hours of operation specified in the TRACS Users Guide. Prior to such input, all TRACS comparison Participants, including those that have trade report information submitted to NASD by any third party, must obtain from NASD a unique identifying Market Participant Symbol (''MMID'' or ''MPID''), and use that identifier for trade reporting and audit trail purposes.

(2) Market Maker Obligations

(A) TRACS Market Makers shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.

(B) A TRACS Market Maker that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by that Market Maker.

(C) A TRACS Market Maker that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison participant and notify the TRACS Operation Center if its clearing broker is to be changed; this will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS Market Maker fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature, and be precluded from participation as a Market Maker in ADF until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD. If, however, NASD finds that the TRACS Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4619A.

(3) Order Entry Firm Obligations

(A) TRACS Order Entry Firms shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for TRACS eligible securities.

(B) A TRACS Order Entry Firm that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the Order Entry Firm.

(C) A TRACS Order Entry Firm that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS Order Entry Firm fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.

(4) Clearing Broker Obligation

TRACS clearing brokers shall be obligated to accept and clear as a party to the transaction each trade that the system identifies as having been effected by itself or any of its correspondent executing brokers. Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the TRACS Operations Center and affirmative action has been completed by the Center to remove the clearing broker from the TRACS trade comparison feature for that correspondent executing broker. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (4).

(5) ECN Obligations

(A) TRACS ECNs shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operations Center to verify authorization for submitting trade data to the TRACS trade comparison feature for TRACS eligible securities.

(B) A TRACS ECN that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the ECN.

(C) A TRACS ECN that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS ECN fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with NASD.

6130A. Trade Report Input

(a) Reportable TRACS Transactions

Members shall utilize TRACS to report transactions that are required to be reported to NASD through the ADF pursuant to the Rule 4630A and 5430 Series, including executions of less than one round lot if those executions are to be compared and locked-in. Members may utilize TRACS to report transactions that are eligible to be reported to NASD pursuant to Rule 5430, including executions of less than one round lot if those executions are to be compared and locked-in. TRACS also will process trades that are submitted on an automatic locked-in basis for transmission to NSCC. All trades that are reportable transactions pursuant to NASD Rule 4630A Series will be transmitted to the applicable securities information processor; however, only those trades that are subject to regular way settlement and are not already *locked-in trades will be compared and locked-in through TRACS. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in TRACS or reported to DTCC.*

(b) When and How Trade Reports are Submitted to TRACS

(1) TRACS trade comparison Participants who are Reporting Members that choose to submit a trade for comparison shall transmit to TRACS the information required by Rule 4630A Series, as applicable, within 90 seconds of execution.

(2) A TRACS trade comparison Participant who is a Non-Reporting Member to a transaction shall, within twenty (20) minutes after execution accept (or decline, if applicable) a transaction submitted by the Reporting Member for comparison through TRACS. A Non-Reporting Member has an obligation to ensure that the information that it transmits or accepts in TRACS is timely, accurate and complete. Therefore, if a Non-Reporting Member accepts a transaction in TRACS transmitted by the Reporting Member for comparison through TRACS, then the Non-Reporting Member shall be deemed to have adopted all of the data elements required by Rule 4632(c) or (d), as applicable, concerning the Non-Reporting Member's side of the transaction, absent any subsequent modification of the trade through TRACS.

(3) Trades not required to be reported for public dissemination may still be compared and locked-in through TRACS.

(4) Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by NASD: (i) MMID Trade Entry; (ii) Trade Cancellation; and (iii) Trade Break.

(5) Non-Reporting NASD Members may conduct the following functions in TRACS pursuant to TRACS specifications established by NASD: (i) Trade Accept; (ii) Trade Decline; and (iii) Trade Break.

(6) A party entering a trade report into the TRACS trade comparison feature shall use a designated symbol to denote whether the party is submitting the trade report as the Reporting Member or the Non-Reporting Member.

6140A. TRACS Processing

Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:

(a) Trade Acceptance

The reporting party enters its version of the trade into the system and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the TRACS system at the end of trade date processing;

(b) T+N Trade Processing

T+N entries may be submitted until 6:30 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the TRACS system. TRACS will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. TRACS will automatically lock in and submit to NSCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. TRACS will not automatically lock in T+22 (calendar day) or older open "as-of" trades that were carried-over from the previous business day; these trades will be purged by TRACS at the end of the carry-over day if such trades remain open. Members may re-submit these T+22 or older "as-of" trades into TRACS on the next business day for continued comparison and reconciliation for up to one calendar year.

6150A. Reserved

6160A. Obligation to Honor Trades

If a TRACS trade comparison Participant is reported by TRACS as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

6170A. Audit Trail Requirements

The data elements specified in the Rule 4600A Series are critical to NASD's compilation of a transaction audit trail for regulatory purposes. As such, all member firms using the TRACS Service have an ongoing obligation to input such information accurately and completely.

6180A. Reserved

6190A. Termination of TRACS Service

NASD may, upon notice, terminate TRACS service as to a Participant in the event that a TRACS Participant fails to abide by any of the rules or operating procedures of the TRACS service or NASD, or fails to honor contractual agreements entered into with NASD or its subsidiaries, or fails to pay promptly for services rendered by the TRACS Service.

* * * * *

6950. ORDER AUDIT TRAIL SYSTEM

* * * * *

6954. Recording of Order Information

(a) through (c) No Change.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) through (2) No Change.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

(A) the order identifier assigned to the order by the Reporting Member,

(B) the market participant symbol assigned by [the Association] *NASD* to the Reporting Member,

(C) the date the order was first originated or received by the Reporting Member,

(D) the Reporting Member's number assigned for purposes of identifying transaction data in ACT,

(E) the designation of the order as fully or partially executed,

(F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining,

(G) the identification number of the terminal where the order was executed, [and]

(H) the date and time of execution[.] *and*

(I) the national securities exchange or facility operated by a registered securities association where the trade was reported.

7000A. CHARGES FOR ADF SERVICES AND EQUIPMENT

7010A. System Services

(a) Trade Comparison and Reporting Service

The following charges shall be paid by ADF participants for use of the Trade Comparison and Reporting Service (TRACS):

Transaction Related Charges:

Comparison—$0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Automated Give-Up—$0.029/side
Late Report—T+N—$0.30/side
Browse/query—$0.28/query*

*Each TRACS query incurs the $0.28 fee; however, the first accept or decline processed for

Trade Reporting—$.029/side (applicable only to reportable transaction not subject to trade comparison through TRACS)**

Corrective Transaction Charge—$0.25/ Break, Decline transaction, paid by each party

(b) Quotation Updates

A member will be charged $0.01 per quotation update in the ADF quotation montage on those quotation updates that exceed three times the number of transactions reported to the ADF by the member. A ''quotation update'' includes any change to the price or size of a displayed quotation. This charge will be determined on a monthly basis.

(c) Volume Discounts on Transaction and Quotation Fees

During the initial six months of operation of the ADF, except as provided in paragraph (d) below, transaction fees incurred pursuant to paragraph (a) above, except the browse/ query fee, and quotation update fees incurred pursuant to paragraph (b) above will be discounted on the following incremental basis:

Trades per month	Chargeable quotation updates per month	Discount (Percent)
Up to 2,000	Up to 8,000	0
2,001 to 4,000	8,001 to 15,000	10
4,001 to 6,000	15,001 to 25,000	25
6,001 to 8,000	25,001 to 35,000	35
8,001 or greater	35,001 or greater	50

(d) Limited Period Without Transaction and Quotation Charges

During the initial six months of operation of the ADF, members will not be charged for transaction fees incurred pursuant to paragraph (a) above and the quotation fees incurred pursuant to paragraph (b) above for up to a three-month period. The three-month ''no transaction'' fee period begins on the first day on which a member has incurred charges under paragraph (a) or paragraph (b) above, and will continue until the earlier of three months or the end of the six-month period.

7020A. Equipment Related Charges

The charge for using ADF terminal software shall be $275 per month for each terminal and $550 per month for each server.

7030A. Reserved

7040A. Installation, Removal, Relocation or Maintenance

ADF subscribers shall pay a minimum charge of $5,000 for installation costs associated with connecting to the ADF. Upon installation, removal, relocation or maintenance of terminal and related equipment, or combination thereof, the subscriber shall pay charges incurred by NASD or its subsidiaries above the $5,000 minimum, on behalf of the subscriber for the work being performed by the maintenance organization retained by NASD or its subsidiaries. Upon payment of $5,000 under this provision, members will receive a credit of up to $5,000 to be used toward their trade reporting and comparison charges imposed under Rule 7010A(a).

7050A. Other Services

(a) Daily Reports to Newspapers

Reports for regular public release, such as a list of closing quotations or market summary information for newspaper publication, shall be produced in a format acceptable to most publishers without charge. Should such information be transmitted to another location at the request of any firm, a charge may be imposed for such services by NASD or a subsidiary.

(b) Other Requests for Data

NASD or a subsidiary may impose and collect compensatory charges for data supplied upon request, where there is no provision elsewhere in this Rule 7000A Series for charges for such service or sale.

(c) Testing Services

(1) Subscribers that conduct tests of their computer-to-computer (CTCI) or digital interface (DIS/CHIPS) with the central processing facilities of Alternative Display Facility shall pay the following charges:

$285/hour—For CTCI/DIS/CHIPS testing between 9:00 a.m. and 5:00 p.m. Eastern Time on business days;

$333/hour—For testing at all other times on business days, or on weekends and holidays.

(2) The foregoing fees shall not apply to testing occasioned by:

(A) new or enhanced services and/or software provided by ADF or

(B) modifications to software and/or services initiated by ADF in response to a contingency.

7060A. Partial Month Charges

The charges for the month of commencement or termination of service will be prorated based on the number of trade days in that month.

7070A. Reserved

7080A. Late Fees

(a) All charges imposed by NASD that are past due 45 days or more will be subject to a late fee computed by taking the summation of one and one-half percent (1½%) of the amount past due for the first month plus one and one-half percent (1½%) of the amount past due for any month thereafter, compounded by late fees assessed for previous months.

(b) To illustrate how late fees are assessed, if an account is past due $1,000 for 45 days, the late fee would be $30.22. This charge reflects a charge of $15 for the first month past due ($1,000 × 1½%) and $15.22 for the second month past due ($1,015 × 1½%).

7100A. Minor Modifications in Charges

(a) To compensate for minor variations in annual net income, the Board of Governors of NASD may increase or decrease the total charges in this Schedule by 10% from the base charges as adopted on [insert adoption date] upon filing such change with the Commission pursuant to Section 19(b)(3) of the Act.

(b) To facilitate the development of new information services and uses under appropriate terms and conditions, arrangements of limited duration, geography and/or scope may be entered into with Broker/Dealers,

a transaction is free, to insure that no more than $0.28 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the $0.28 query charge.

**The trade reporting service charge is applicable to those trades input into TRACS for reporting purposes only, such as NSCC Qualified Special Representative reports and reports of internalized transactions.

Vendors and other persons which may modify or dispense with some or all of the charges contained in this Rule or the terms and conditions contained in standard agreements. The arrangements contemplated will permit the testing and pilot operation of proposed new information services and uses to evaluate their impact on and to develop the technical, cost and market research information necessary to formulate permanent charges, terms and conditions for filing with and approval by the Commission.

* * * * *

9000. Code of Procedure

9100. Application and Purpose

* * * * *

9120. Definitions

(a) through (r) No Change.

(s) ''Market Regulation Committee''

The term ''Market Regulation Committee'' means the committee of NASD [Regulation] designated to consider the federal securities laws and the rules and regulations adopted thereunder and various *NASD* Rules [of the Association] and policies relating to:

(1) through (3) No Change.

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the Nasdaq Stock Market Rules, (Rule 4000 Series), *NASD Alternative Display Facility Rules (Rule 4000A Series)* other Nasdaq and NASD Market Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 *and 6000A* Series), and Charges for Services and Equipment Rules (Rule 7000 *and 7000A* Series).

(t) through (cc) No Change.

* * * * *

9700. Procedures on Grievances Concerning the Automated Systems

9710. Purpose

The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by *NASD* [the Association], or any subsidiary thereof, and approved by the Commission, not otherwise provided for by the Code of Procedure as set forth in the Rule 9000 Series the Uniform Practice Code as set forth in the Rule 11000 Series or the Procedures for Review of Nasdaq Listing Determinations as set forth in the Rule 4800 Series.

* * * * *

9720. Form of Application

All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several allegations, each allegation shall be stated separately. All applications must be signed and shall be directed to Nasdaq *relating to automated quotation, execution or communications system owned or operated by Nasdaq and to NASD for any such system owned and operated by NASD.*

* * * * *

9730. Request for Hearing

Upon request, the applicant shall be granted a hearing after reasonable notice. In the absence of such request for a hearing, *NASD or* Nasdaq*, as applicable,* may, in its discretion, have any application set down for hearing or consider the matter on the basis of the application and supporting documents.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. NASD is proposing to operate the ADF on a pilot basis for nine months, pending the anticipated approval of the ADF Proposal and the anticipated approval of Nasdaq as a national securities exchange [4] and its resultant separation from NASD. As described in detail in the ADF Proposal, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's approval order for Nasdaq's Order Collector and Display Facility (''SuperMontage'') [5] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.

The ADF Pilot will provide ADF Pilot market participants [6] the ability to post quotations in Nasdaq securities and will provide all NASD members that participate in the ADF Pilot the ability to view quotations and report transactions in Nasdaq securities to the appropriate Securities Information Processor (''SIP'') [7] for consolidation and dissemination of data to vendors and ADF Pilot Market Participants. The facility also will provide for trade comparison through the Trade Comparison and Reporting Service (''TRACS''), which is described in detail below. The facility further will provide for real-time data delivery to NASD for regulatory purposes, including enforcement of firm quote and related rules.

As proposed in the ADF Proposal, the ADF would provide Market Participants the ability to quote and trade Nasdaq and exchange-listed securities. However, several regulatory issues relating to the trading of exchange-listed securities on the ADF have not been resolved. Because these open issues do not relate to trading Nasdaq securities, NASD is proposing to operate the ADF Pilot with respect to Nasdaq National Market and Nasdaq SmallCap Market securities (collectively, ''Nasdaq Securities'') only. The ADF Pilot would operate on a pilot basis until the close of daily operation of the ADF Pilot on April 24, 2003.

During the ADF Pilot, the NASD will own and operate both Nasdaq and the ADF Pilot. Accordingly, the proposed rules for the ADF Pilot relating to specific quotation and trading requirements for activities through the ADF Pilot are separate from the quotation and trading rules relating to Nasdaq. Further, certain Nasdaq rules have been amended to reflect the fact that members that choose to participate in both Nasdaq and the ADF Pilot may elect to trade report to either facility, except for those transactions that are executed or facilitated by a Nasdaq system.[8]

The proposed ADF Pilot trade reporting rules are consistent with current requirements applicable to

[4] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No. 10–131).

[5] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR–NASD–99–53).

[6] Proposed ADF Pilot Rule 4300A defines ''Market Participants'' as either an NASD registered Market Maker or an NASD Registered electronic communication network (''ECN'').

[7] Nasdaq initially will be the designated SIP for all transactions in Nasdaq securities. It is anticipated that during the ADF Pilot, the SIP will distribute a best bid and offer for both NASD and Nasdaq. *See* note 24, *infra* for further discussion on this issue.

[8] *See* proposed ADF Pilot Rule 4630, Rule 5430, and Rule 6100.

Nasdaq market participants and are not intended to require new or different trade reporting responsibilities for parties to transactions. As described in more detail herein, the proposed Rule 5400 Series details which party to a transaction has the trade reporting responsibility and where the party with the trade reporting responsibility is required, or has the choice, to trade report to TRACS or ACT.

Market Maker and ECN Registration. As required by existing rules applicable to Nasdaq market makers, ADF Pilot Market Participants would be required to register as market makers or electronic communications networks (''ECNs'') for each security in which they make a market or display orders. Market makers would receive approval for registration upon demonstration that they are members in good standing and comply with the net capital and other financial responsibility requirements of the Act. To ease the administrative burden on NASD members, the ADF Pilot rules initially would allow registration as a market maker in the ADF Pilot upon proof that a firm is a registered Nasdaq market maker. Additionally, the proposed rule change tracks Nasdaq requirements that market makers maintain continuous two-sided, firm quotations and prescribes market maker obligations when a bid or offer locks or crosses the market. ECNs, however, may post one-sided quotes. If a Registered ADF Pilot market maker that also is a Registered Nasdaq market maker is seeking excused withdrawal status, it must obtain such excused withdrawal status in both facilities for the same time period.

Order Access Rule. The ADF Pilot rules differ from current rules applicable to trading in Nasdaq securities most significantly with respect to participants' ability to reach quotes for Nasdaq securities displayed in the ADF Pilot. NASD will not provide Market Participants in the ADF Pilot an order routing capability.[9] To provide a means to enforce compliance with firm quote obligations, locked and crossed quotation obligations,[10] and to provide other market participants within the ADF Pilot and in other markets the ability to provide best execution, in the absence of an NASD-provided router, the proposed rule change contains new Rule 4300A.

Direct and Indirect Access. Generally, proposed Rule 4300A requires NASD Market Participants to provide direct electronic access to other Market Participants and to provide to all other NASD members direct electronic access and allow for indirect electronic access to the individual Market Participant's quote. As discussed above, the rule defines Market Participants as either an NASD Registered Market Maker or an NASD Registered ECN. In other words, Market Participants are those members that post quotations in the ADF Pilot.

The rule requires Market Participants to provide other Market Participants with direct electronic access to their quotes. ''Direct electronic access'' is defined in the rule as the ability to deliver an order for execution directly against an individual NASD Market Participant's best bid or offer without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to NASD Market Participant's own customers. Therefore, while the linkage must be electronic—telephone access is insufficient—the proposed rule allows Market Participants flexibility to determine the type and method of linkage. For example, the proposed rule would permit Market Participants to link directly among themselves bilaterally using their own technology or to use a provider with multilateral order routing facilities to satisfy the linkage requirements. The rule requires that a Market Participant be equally accessible to all other Market Participants via this electronic link.

The quote access requirements of proposed Rule 4300A would not extend to intermarket access for trading Nasdaq securities. Unlike for CQS securities, the Commission has not mandated an intermarket linkage like ITS for Nasdaq securities. Accordingly, the NASD does not believe it appropriate for it to unilaterally impose such an intermarket linkage obligation. Rather, the NASD would propose that members of another market that desire to access a Market Participant's quotes in the ADF Pilot in Nasdaq securities establish an execution arrangement with that ADF Pilot Market Participant or, alternatively, become a member of the NASD.

The proposal also would require Market Participants to provide all other NASD broker-dealer members (*i.e.,* those members that do not quote in ADF Pilot but want to access ADF Pilot quotes) with direct electronic access and allow for indirect electronic access through their customer broker-dealers. Indirect electronic access is defined in the proposal as the ability to route an order through a Market Participant's customer broker-dealer for execution against the Market Participant's best bid and offer, without the need for voice communication, with equivalent speed, reliability, availability, and cost, as are made available to the Market Participant's customer broker-dealer providing access to the Market Participant's quotes.

The proposed rule change requires a Market Participant to offer both direct and indirect access to member broker-dealers. Market Participants must make themselves accessible to those member broker-dealers that wish to link with them directly and also must permit access indirectly through their customer broker-dealers. Similarly, the requirement to allow for indirect access does not permit Market Participants to refuse direct access to member broker-dealers that would prefer direct connectivity; rather, it creates an additional means for non-Market Participant broker-dealers to access Market Participants' quotes.

Rule 4300A prohibits Market Participants from in any way discouraging or discriminating against NASD members that wish to reach their quotes. NASD believes this approach is the most appropriate means to ensure equal and universal access by its members to the quotations displayed in the ADF Pilot. A Market Participant may deny access only in the limited circumstances where a broker-dealer fails to pay contractually obligated costs for access to a Market Participant's quotes; otherwise, Market Participants must provide access to their quotes displayed in the ADF Pilot to all NASD member broker-dealers seeking such access.

The order access rule would apply only to a Market Participant's top of book, *i.e.,* the best bid and offer that is displayed in the ADF Pilot. Therefore, Market Participants retain substantial flexibility to negotiate the terms of many other services, such as full book access, placing orders, and use of reserve sizes. ECNs are permitted under the proposed rule to charge more for ''hit or take'' access only '' purely a liquidity taking function—than for full subscriber services, provided that the fee is

[9] The NASD will not provide an order routing capability for Nasdaq securities because the NASD believes this will allow it to better perform its core investor protection mission by focusing on regulation rather than market operations. The NASD also believes that market participants already do, and can continue to, establish and run order linkage facilities that are as or more efficient and innovative than a facility NASD could provide. The NASD believes that this approach comports with the requirements of the Act and is consistent with the NASD's obligation to promulgate rules that are designed generally to facilitate the orderly collection, distribution, and publication of quotations in securities traded otherwise than on a national securities exchange. *See* Section 15A(b)(11) of the Act, 15 U.S.C. 78o–3(b)(11).

[10] This proposed Rule 4300A would be the basis for satisfying, among other things, locked and crossed quotation obligations.

reasonable, based on objective criteria, and not imposed discriminatorily.

Cost Allocation. Under the proposed rule change, Market Participants must share equally the costs of providing to each other the direct electronic access required by rule, unless those Market Participants agree upon another cost-sharing arrangement. For example, assume the ADF Pilot consisted of five Market Participants and a sixth broker-dealer then registered as an ADF Pilot Market Participant. Under this scenario, each of the five existing Market Participants would be required to split with the new Market Participant the costs to establish their respective bilateral links with the new Market Participant, unless the parties agreed upon a different cost allocation.

Market Participants also must pay the costs to enable direct electronic access, as defined in the proposed rule, to their quotes. Thus, a Market Participant must bear the costs to build, upgrade or otherwise reconfigure its technology to allow other broker-dealers to connect to it, including the costs to accommodate additional volume resulting from indirect electronic access order flow through customer broker-dealers. NASD believes that these costs are part and parcel of choosing to operate in the ADF Pilot as a Market Participant and therefore must be borne by the Market Participant. Similarly, those non-Market Participant broker-dealers seeking access to a Market Participant's quote must bear the line or other costs necessary to connect with a Market Participant's network to send and receive orders.

Access Fees. A customer broker-dealer may charge its customers a fee to provide indirect access to a Market Participant's quotes. Under the rule proposal, a Market Participant may not influence or prescribe what a customer broker-dealer may charge its customers for indirect access to the Market Participant.[11] Nor may the Market Participant preclude or discourage a specific customer broker-dealer from providing indirect access, either through discriminatory pricing or by degrading its quality of service to its customer broker-dealer. A Market Participant may, however, offer to provide direct electronic access at a competitive price as part of the services it provides to customers.

Connectivity costs should be distinguished from fees for various other services provided by Market Participants. NASD recognizes that Market Participants have a variety of existing business relationships with broker-dealers for which they charge fees for services rendered, *e.g.,* the handling of limit orders, price improvement opportunities, and liquidity enhancement. Market Participants may continue to assess fees for these types of services, as permissible under current rules and regulations.

While ECNs may charge to execute against their best bid and offer, the fee must be based on reasonable and objective criteria. And while ECNs are permitted under the proposal to charge more for hit-or-take access than for full service access, they may not impose hit-or-take fees in a way that discriminates against a particular broker-dealer or class of broker-dealers. Thus, in setting its fee schedule, an ECN may not look through its order flow to identify and discriminate against the source of the order flow, *e.g.,* a competitor or a broker-dealer that is accessing the quote indirectly. Rather, an ECN may set a reasonable fee for order flow that takes liquidity—a fee that may be higher than for order flow that provides liquidity—and apply that fee to all such order flow, irrespective of its origin. Similarly, an ECN that offers a volume discount must offer the same terms to all broker-dealers accessing its quote, without regard to the identity of the broker-dealer or the source of its order flow. NASD believes that this rule is necessary to ensure fair and equitable access to ECN quotes displayed in the ADF Pilot.

Performance Standards. Because the ADF Pilot will not be providing an order router or automatic execution system, NASD believes that a minimum performance standard is appropriate to ensure that quotes in the ADF Pilot are reliable and accessible. Specifically, the proposed rule change would impose a technological requirement on Market Participants, mandating that their order linkage system provide them the capability to respond to an order—*i.e.,* accept or decline it—from another Market Participant or customer broker-dealer, within two seconds of receipt. Additionally, Market Participants would be required to have in place a system that can accomplish a ''round trip'' of an order from another Market Participant in three or fewer seconds, measured from the time an order is released by a Market Participant until the time notification of action taken on the order is received back by the Market Participant from whom the order originated. In short, there are two relevant time standards to ensure a minimum performance capability: Three-second turnaround for communications between Market Participants and two seconds for execution of orders received by Market Participants from other Market Participants, as well as customer broker-dealers.

Market participants will be required to certify that their systems can meet these standards at peak capacity, based on reasonable forecasts, before they are authorized to post quotes on the ADF Pilot. On an ongoing basis, Market Participants will be required to re-certify that they can meet these performance standards when volumes exceed those on which the initial certification was based. NASD will review test data to confirm the accuracy of such certifications.

The proposed performance standards are independent of existing firm quote requirements in Rule 11Ac1–1 under the Act,[12] NASD Rule 3320 and proposed NASD Rule 4613A(b), which require immediate execution of an order up to the quotation size displayed by the Market Participant upon receipt of an order to buy or sell. The performance standards ensure that all Market Participants have adequate technology that will not degrade the overall accessibility of quotes in the ADF Pilot. By comparison, the firm quote rule addresses a Market Participant's obligation to honor their quotes when they receive an order and prohibits backing away. Accordingly, the proposal would not require market makers to fill orders in two seconds. However, due to their structure, broker-dealers whose business models rely primarily upon electronic execution systems, for example ECNs, would be expected to fill orders in less than two seconds.

System Outages. In addition, to further ensure the reliability of linkages and the integrity of the ADF Pilot, the NASD is proposing to suspend from quoting for 20 business days any Market Participant that experiences three unexcused, confirmed system outages during any period of five business days.

NASD proposes to define system outages as (1) an inability to quote or (2) an inability to respond to orders. The proposal provides for a review and appeal process, where the burden will rest with the Market Participant to establish that a confirmed system outage was attributable to another party. The proposal also would give NASD discretion to excuse certain outages where the Market Participant voluntarily brings the matter to the

[11] The fact that a Market Participant has an ownership interest in a customer broker-dealer or multilateral linkage provider does not, in and of itself, constitute influence for the purposes of this proposed rule.

[12] 17 CFR 240.11Ac1–1.

attention of NASD. Finally, NASD will investigate complaints related to failure to provide direct or indirect access.

Trading Rules Compliance. To allow NASD to monitor compliance with certain trading rules, such as the firm quote rule and ''trade or move'' rules, the proposed rule change also requires that all NASD Market Participants that display quotations or orders in the ADF Pilot record specified items of information pertaining to orders they receive from broker-dealers via direct or indirect electronic access, and report this information to NASD on a real-time basis. The proposed rule requires this information be provided to NASD within 10 seconds of the receipt of an order and, if applicable, when an order is acted upon or responded to. As part of the subscriber agreement approval process, Market Participants would be required to provide the terms and methods by which they will comply with these rules. The NASD would review these terms prior to approving a subscriber agreement.

Trade Reporting and Trade Comparison Service. As noted above, the NASD intends to operate trade reporting and comparison services as part of the ADF Pilot. The trade reporting service would collect trade reports for NASD Market Participants, as well as any NASD member that chooses to or is required to report transactions through the ADF Pilot. The service would transmit the reports automatically to the respective SIP, if required, for dissemination to the public and the industry.

This service would operate similarly to the trade reporting functions of Nasdaq's Automated Confirmation Transaction (''ACT'') Service,[13] but would contain one notable distinguishing feature. The ADF Pilot will support a ''three party trade report'' that will make it easier for ECNs to submit trade reports involving their subscribers and for market makers to submit riskless principal trade reports. A three party trade report will be a single last sale trade report that would denote one reporting member—*i.e.,* the party with the trade reporting responsibility as defined in Rule 4633A—and two contra parties. The ADF will be designed to split the three party trade report into two separate reports that will then be processed independently in accordance with existing trade reporting rules. Each of these reports will contain its own identifier and a reference to the original three party trade report, so that the separate reports can be mapped to the same transaction. Therefore, the ADF Pilot trade reporting system would streamline the reporting process by reducing from three or two to one the number of trade reports for most ECN and riskless principal transactions.

The NASD also will operate a trade comparison service as part of TRACS that would (1) compare trade information entered by TRACS participants and submit ''locked-in'' trades to the Depository Trust Clearing Corporation (''DTCC'') for clearance and settlement; (2) transmit reports of the transactions automatically to the respective SIP, if required, for dissemination to the public and the industry; and (3) provide participants with monitoring capabilities to facilitate participation in a ''locked-in'' trading environment. The proposed trade comparison rules are found in proposed Rule 6100A.

The NASD expects that a significant volume of trades will be locked-in and submitted directly to DTCC by way of agreements between Market Participants and Qualified Service Representatives (''QSRs''). As a result, NASD expects the volume of trades requiring comparison sent through TRACS to be relatively low.[14] For those trades where one party is a TRACS subscriber and the other party is an ACT subscriber, both TRACS and ACT will accept one-sided trade reports and submit those trades to NSCC. In such cases, NSCC will compare the trade.

Transaction Reporting. The proposed rule change adopts the current Nasdaq approach to trade reporting for Nasdaq securities whether the member is reporting through TRACS or ACT. Proposed Rule 5430(b) designates which party to a transaction has the trade reporting responsibility and where the party with the trade reporting responsibility is required, or has the choice, to trade report to TRACS or ACT. Specifically, proposed Rule 5430(b) requires that the seller report trades between two market makers or two non-market makers, the market maker report trades between it and a customer, and an NASD member report trades between it and a customer.

The proposed rule change also provides NASD members that are market makers in both the ADF Pilot and Nasdaq and have a trade reporting obligation under Rule 5430(b), the choice to trade report to the ADF Pilot or Nasdaq, except for those transactions that are executed or facilitated by a Nasdaq system. If a member is a market maker in either Nasdaq or the ADF Pilot, but not the other facility, the member must report to the facility of which it is a market maker. For example, if a member is an ADF Pilot market maker, but not a Nasdaq market maker in a security, the member, if it has a trade reporting obligation, must report the transaction in that security to TRACS, unless the trade is executed using ACES, the Nasdaq National Market Execution System (''NNMS''), the SelectNet Service, the SmallCap Small Order Execution System (''SOES''), or the Primex Auction System (''Primex''). A trade executed using ACES must be reported using ACT, and trades executed using NNMS, SelectNet, SOES, or Primex will be reported to ACT automatically. A member that is not a market maker in either facility but is a participant in both facilities and has a trade reporting obligation, may trade report to either facility, unless the trade is executed using ACES, NNMS, SelectNet, SOES, or Primex. Trades executed using ACES must be reported to ACT, and trades executed using these other systems will be reported to ACT automatically.

With respect to trade reporting by ECNs, ECNs that currently display quotes in Nasdaq have developed different methods of reporting trades. ECNs may continue to report to Nasdaq and/or the ADF in this same manner.

Short Sale Rule. The proposed rule change would amend the short sale rule and its accompanying interpretation such that the current Nasdaq short sale rule should apply to trading in Nasdaq Securities on the ADF Pilot with the exception described below. The proposed rule change, however, would establish a different bid on which to base the applicability of the short sale rule for purposes of trading on the ADF Pilot. Specifically, the proposed amendment would require members trading on the ADF Pilot to comply with the short sale rule based on the national best bid rather than the Nasdaq best bid. Although a best bid will be calculated for the ADF Pilot, NASD believes that for the purposes of the short sale rule, the national best bid will be more reflective of market-wide trading in a security and therefore will better further the purposes of the rule. Aside from the changes noted above, the ADF Pilot short sale rule would mirror Nasdaq's short sale rule, including the current exemption for registered market makers engaged in bona fide market making activity.

[13] The NASD service would not perform risk management services that are provided by Nasdaq's ACT service.

[14] DTCC has agreed to continue its existing trade comparison service for over-the-counter equity securities to provide comparison services between an ADF Pilot Market Participant and a Nasdaq market participant.

Trading Halts. Proposed Rule 4120A would provide the NASD with authority to halt trading through the ADF Pilot in Nasdaq Securities. For ADF Pilot-eligible securities, the proposed rule would mandate a trade halt when another market halts trading in a security for regulatory reasons and would give the NASD discretionary authority to halt trading when another market halts trading for operational reasons. Similar discretionary authority would extend to circumstances where a security traded through the ADF Pilot is a derivative or component of a security that has been halted. In addition, the NASD would have authority to close the ADF Pilot to quotation activity when the ADF Pilot is unable to transmit real-time quotation and trade reporting data to the SIP. In the event that the NASD chooses not to halt trading under the aforementioned discretionary circumstances, market participants could continue to trade through the ADF Pilot and would be required to meet all applicable trade reporting requirements.

Any trading halt initiated by the NASD would become effective simultaneously with notification via an administrative message sent through the ADF Pilot terminal or interface. Trading similarly would resume after an administrative notice has been issued.

Withdrawal of Quotations. The proposed rule change eliminates for ADF market makers one of the conditions in existing Rule 4619(b)(3) for a market maker seeking excused withdrawal status based on vacation. Under the current rule, excused withdrawal status may only be granted to a market maker that has three or fewer Nasdaq Level 3 terminals. Proposed Rule 4619A(b)(3) does not replicate that requirement for ADF Pilot market makers because the ADF Pilot will not operate as a primary market. As such, the absence of a market maker with more than three ADF Pilot terminals would not have a significant impact on the liquidity in those securities in which it makes a market.

Obligations When Quoting in Multiple Market Centers. Existing Rule 2320(g)(2) requires members that display quotations for non-Nasdaq securities in two or more quotation mediums to post the same priced quotations in each medium. The proposed rule change adds a similar obligation under proposed Rule 4613A(e)(1) for members that display quotations for Nasdaq Securities in two or more market centers, including the ADF Pilot. The proposed rule, however, does not prohibit displaying different size quotations in two or more mediums or market centers, provided that the price displayed is the same.

Obligation to Have Quotations From Other Market Centers in Close Proximity. Proposed Rule 4613A(e)(2) would require a registered NASD market maker to have in close proximity to the ADF Pilot terminal or interface at which it makes a market in a Nasdaq security a quotation service that disseminates quotations in that security. A similar rule, Rule 6330(c), currently exists with respect to CQS market makers. As with the CQS rule, it is the NASD's intention for the quotations displayed in the ADF Pilot terminals or interfaces to function as a verification mechanism whereby Market Participants in the ADF can monitor their current ADF Pilot quotations and ensure that the NASD is timely updating and disseminating their quotations. NASD will not disseminate to Market Participants in the ADF Pilot any consolidated quotation or trade data in a security from securities exchanges and market centers. To ensure that ADF Pilot Market Participants have the data necessary to make proper order routing decisions and to satisfy the Vendor Display Rule,[15] NASD will require Market Participants in the ADF Pilot to obtain from vendors dynamic quotations and last-sale information on the securities they trade through the ADF Pilot, and to display this data in close proximity to the ADF Pilot data displayed on their terminals, just as is currently required of CQS market makers in Rule 6330(c).

Voluntary Termination of Registration. The proposal contains a new provision related to voluntary termination as an NASD market maker. Proposed Rule 4620A provides that registration as a Registered ADF market maker in a security is voluntarily terminated where the market maker (1) withdraws its quotations from the ADF Pilot and does not re-enter quotations in the security for five minutes or (2) fails to re-enter quotations within 30 minutes of the end of a trading halt. In either circumstance, a market maker would be prohibited from re-registering as an ADF Pilot market maker in that security for twenty (20) business days, unless the market maker meets the conditions for excused withdrawal specified in Rule 4619A.

OATS Requirements. For NASD members, the Order Audit Trail System (''OATS'') requirements will remain substantially the same as current requirements. NASD, however, is proposing to require that members complete an additional field on the OATS execution report indicating where the trade was reported. This requirement will enable the NASD to clearly identify which execution reports are associated with ADF Pilot trade reports and which are associated with Nasdaq trade reports and, thereby, keep this data separate and confidential, as necessary.

All NASD members must continue to record in electronic form and report to the NASD on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed (''reportable events'') by NASD members relating to equity securities traded on Nasdaq. When the ADF Pilot and Nasdaq are both operating, NASD members, in many cases, will have at least two options as to where they may choose to report their transactions in Nasdaq Securities. As such, NASD will be required to ''match'' OATS execution reports to either TRACS data or ACT data (or neither) depending upon where the transaction was reported. By having a field in the OATS execution report indicating where the trade was reported, NASD systems will be able to more efficiently compare the execution report to the appropriate trade report.

Fees and Assessments. The proposed rule change includes proposed fees and assessments in the proposed Rule 7000A Series applicable to the ADF Pilot. These proposed fees are substantially similar to those fees proposed in the ADF Proposal, except in two ways that are described below. The following are fees that will be charged relating to transactions on the ADF Pilot: Comparison—$0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares); Automated Give-Up—$0.029/side; Late Report—T+N—$0.30/side; Browse/query—$0.28/query; Trade Reporting—$.029/side (applicable only to reportable transaction not subject to trade comparison through TRACS); and Corrective Transaction Charge—$0.25.

The NASD will charge an ADF Pilot workstation fee of $275 per month for each ADF Pilot terminal software license and $550 per month for each ADF Pilot server license. The NASD also will charge members a minimum of $5,000 for installation costs associated with connecting to the ADF Pilot, and will require reimbursement from members for charges incurred by the NASD above $5,000 due to the installation, removal, relocation or maintenance of terminal and related equipment. However, the NASD will provide market participants with a credit of up to $5,000 toward their trade reporting and comparison charges.

[15] Securities Exchange Act Rule 11Ac1–1, 17 CFR 240.11Ac1–1.

The proposed rule change also provides for several administrative provisions, including partial month charges and late charges for all fees that are past due 45 days or more. The proposed rule change also permits the NASD to increase or decrease the total charges described in the Rule 7000A series by 10% upon filing such changes with the SEC. Similar to existing NASD Rule 7100(b), the proposed rule change also permits the NASD to enter into agreements with certain broker/dealers, vendors and other persons, which may modify or dispense with some or all of the charges described in the 7000A Series.

NASD also is proposing to charge a quotation update fee of $.01 per quotation update in the ADF Pilot quotation montage. This quotation update fee, however, will apply only to those quotation updates by the member in the ADF Pilot that exceed three times the number of transactions reported by the member through the ADF Pilot. This quotation update fee will be determined on a monthly basis. By imposing this fee only where the quotation updates significantly exceed the number of transactions reported, this fee structure will fairly impose costs on those members whose quotation activity creates system capacity demands, and therefore costs that are not covered by a trade reporting fee.

As noted above, the proposed ADF Pilot fees differ with respect to the ADF fees proposed in the ADF Proposal in two ways. First, NASD is proposing to waive transaction and quotation update fees (proposed Rules 7010A(a) and (b), respectively) for a period of up to three months during the initial six months of operation of the ADF Pilot. As a result, during this six-month period, for up to three months starting from the initial transaction by an ADF Pilot participant, the participant would not be charged transaction or quotation fees. However, the time period for which the three months of ''no charges'' is available concludes at the end of the six-month period, irrespective of whether the member has participated in the ADF Pilot for three months. For example, if the ADF Pilot has been operational for four months and a market participant begins trading at that time, it only would be eligible for ''no charges'' for two months.

Second, for the initial six month period of the ADF Pilot's operation, NASD is proposing to adjust its fees imposed on trade reporting and quotation activities through the ADF Pilot to provide for volume discounts subsequent to the three month ''no charges'' period. NASD believes that this approach will make the overall cost of trade reporting and quoting through the ADF Pilot more attractive to higher volume users during the first six months of ADF Pilot's operation. Specifically, the proposed fee structure would provide discounted fees for those members that have greater than 2,000 trades per month or for those members that have greater than 8,000 chargeable quotes per month. The proposed volume discounts would apply to all transaction fees incurred under proposed Rule 7010A(a), except the browse/query fee, and all quotation update fees incurred under proposed Rule 7010A(b). The discounts would apply in the following increments:

Trades per month	Chargeable quote updates per month	Discount (percent)
Up to 2,000	Up to 8,000	0
2,001 to 4,000	8,001 to 15,000	10
4,001 to 6,000	15,001 to 25,000	25
6,001 to 8,000	25,001 to 35,000	35
8,001 or greater	35,001 or greater	50

For example, if a member had 5,000 trades and 16,000 quotation updates during a month, the proposed fee structure would apply as follows: no discount would apply to the first 2,000 trades; the fees imposed on trades 2,001 through 4,000 would be discounted by 10%; and the fees imposed on trades 4,001 through 5,000 would be discounted by 25%. The quotation update charge on 1,000 quotations (those quotations that exceed three times the number of trades) would not be discounted because it is less than 8,001.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act [16] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the NASD believes that this rule proposal is consistent with section 15A(b)(6) of the Act [17] because it does not permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members, or to regulate matters not related to the purposes of the Act or the administration of the Association.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were solicited in response to the ADF Proposal. As noted above, the proposed rule changes of the ADF Pilot are substantially similar to those rule changes proposed in the ADF Proposal that are related to the establishment, implementation, and operation of the ADF. The NASD has responded to the comments received in response to the ADF Proposal. Specifically, the NASD responded to the comments received in response to SR–NASD–2001–90 in its Amendment No. 2 to that filing submitted to the SEC on May 24, 2002.[18] The NASD responded to the comments received in response to SR–NASD–2002–28 in its Amendment

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78o–3(b)(6).

[18] *See* Securities Exchange Act Release No. 45991 (May 28, 2002), 67 FR 39476 (June 7, 2002).

No. 1 to that filing submitted to the SEC on May 14, 2002.[19]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act,[20] because the proposed rule change proposes implementing ADF rules substantially similar to those previously proposed and noticed for comment in the ADF Proposal. The NASD requests that the Commission accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–97 and should be submitted by August 21, 2002.

[19] Amendment No. 1 is available for inspection and copying in the Commission's Public Reference Room and at the principal office of the NASD.

[20] 15 U.S.C. 78s(b)(2).

V. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[21] Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(11) of the Act.[22]

Pursuant to section 15A(b)(11) of the Act,[23] the rules of a registered securities association must be designed generally to facilitate the orderly collection, distribution, and publication of quotations. Moreover, these rules must be designed to produce fair and informative quotations and to prevent fictitious or misleading quotations. As the NASD has proposed to sever its corporate relationship with Nasdaq, it is critical that the ADF (in pilot or permanent form) be established, implemented and operating prior to Nasdaq being registered as a national securities exchange. Therefore, the Commission believes that launching the ADF Pilot furthers the public interest by ensuring that continuity in the over-the-counter market is maintained and that the NASD satisfies its statutory obligation to regulate the over-the-counter market.[24]

In addition, in the SuperMontage approval order,[25] the Commission required the NASD to create a facility that ''permits NASD members to comply with their obligations under Commission and NASD rules (including Exchange Act Rule 11Ac1–1(c)(5) and Regulation ATS) without participating in the Nasdaq execution facility. The facility will identify through the central processor the identity of the NASD member that is the source of each quote, as is required by Exchange Act Rule 11Ac1–1(b)(1)(ii).'' Furthermore, the Commission stated that ''[t]he facility will provide a market neutral linkage to the Nasdaq and other marketplaces, but not an execution service.''

Thus, approval of the ADF Pilot furthers the obligations of the NASD under the Act and as specified by the Commission in the SuperMontage Approval Order.[26] In particular, the ADF Pilot will provide the Commission with an opportunity to gauge whether the ADF in practice fulfills the NASD's statutory obligations. The Commission emphasizes, however, that approval of this ADF Pilot is not a determination that the conditions of the SuperMontage Approval Order described above have been satisfied.

The Commission finds good cause for granting the NASD's request for approval of the proposed rule change on a pilot basis prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that the substance of the proposal has previously been published for notice and comment as part of the ADF Proposal. The Commission has received 30 comment letters on the ADF Proposal.[27]

[21] In granting accelerated approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78o–3(b)(11).

[23] 15 U.S.C. 78o–3(b)(11).

[24] The Commission notes that the launch of the ADF Pilot will result in a new data feed, the Over-the-Counter Montage Data Feed (''OMDF''), being disseminated by the Nasdaq SIP. While the NASD ADF Pilot and Nasdaq operate as the same SRO, the submission of multiple best bid and offers (''BBOs'') by the NASD to the Nasdaq SIP is inconsistent with the OTC–UTP Plan. The Commission has addressed this issue in the 13th Amendment to the OTC–UTP Plan. *See* Securities Exchange Act Release No. 46139 (June 28, 2002), 67 FR 44888 (July 5, 2002). Moreover, the display by market data vendors of either the OMDF or the Nasdaq Quotation Dissemination Service (''NQDS'') without the other is inconsistent with the Vendor Display Rule, SEC Rule 11Ac1–2, 17 CFR 240.11Ac1–2. The Commission has addressed this issue in an interpretive guidance letter. *See* letter to Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, dated July 23, 2002.

[25] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (File No. SR–NASD–99–53) (''SuperMontage Approval Order'').

[26] Specifically, the Commission conditioned the SuperMontage Approval Order upon the following, which must be implemented prior to or at the same time as the SuperMontage: ''(1) That the NASD will offer a quote and trade reporting alternative that satisfies the Order Handling Rules, Regulation ATS, and other regulatory requirements for ATSs, ECNs, and market makers; (2) that NASD quotes disseminated through the exclusive SIP will identify the ATS, ECN, or market maker source of the quote; and (3) that participation in SuperMontage will be entirely voluntary, because NASD quotes will be included in the Nasdaq quotation management system while Nasdaq is the exclusive SIP, but only for display purposes, and the NASD will provide access to its quotes on a market-neutral basis.'' *Id.* at 8054.

[27] The Commission received 26 comment letters on SR–NASD–2001–90. *See* Letter from Sol Reicher, Co-Chairman, Amex Specialists Associations; John Hawkey, Chairman, Amex Floor Brokers Association; and James Hyde, Chairman, Amex Options Market Maker Association, writing on behalf of The Member Associations of the American Stock Exchange, dated January 29, 2002 (''Member Associations of the American Stock Exchange Letter''); Letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc., dated January 24, 2002 (''PHLX Letter #1''); Letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc., dated February 25, 2002 (''PHLX Letter #2''); Letter from Marc E. Lackritz, President, Securities Industry Association, dated July 24, 2001 (''SIA Letter''); Letter from Michael A. Bird, Chairman, and John C. Giesea, President and CEO, Security Traders Association, dated July 1, 2002 (''STA Letter''); Letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange,

Generally, commenters expressed concern with, among other things, (1) the lack of centralized linkage among market participants and an order routing and execution facility; [28] (2) the lack of information regarding technological requirements; [29] (3) whether ITS participation for trading in listed stocks should be mandatory or voluntary; [30] (4) the timing of the launch of the ADF, especially with respect to Nasdaq's pending registration as an exchange and the launch of SuperMontage (several commenters recommended some sort of ''test'' period before the launch of SuperMontage); [31] and (5) the proposed fees, including the lack of market data revenue rebates.[32]

A number of commenters criticized the ADF for not providing a central linkage facility operated and funded by the NASD. They argued that the lack of a core ADF linkage would impede access to the quotes displayed in ADF, discouraging ADF participation, and would impose access costs on order routing firms. Other commenters, however, stated that the approach to access relied upon by the NASD—linkages developed by private access providers—encouraged the development of efficient, technologically innovative access services.

After considering the comments, the Commission believes that the NASD's rule-based access solution has the potential to provide effective market-neutral linkages among ADF market participants and between the ADF and other markets. The sharp reduction in communication line costs in recent years and the advent of competing access providers in the equity markets offer the potential for multiple competitive means of access widely available to participants in the market for Nasdaq securities. This approach has been advocated in other market contexts, and the Commission has previously discussed favorably the potential for a private linkage approach.[33]

Moreover, the NASD rules require direct connectivity between ADF participants to be in place before the participants begin quoting, and the NASD plans to review with each ADF participant the extent that other NASD members have connectivity to their quotes Moreover, the pilot program will give the Commission and the NASD the opportunity to review the practical operation of this access approach and to make changes where necessary to improve access capabilities.

The commenters also raised concerns about the lack of information regarding the requirements for the system. Some of these comments were in fact criticisms of the communications protocols used by the ADF system.

The Commission notes that the NASD made its technical specifications for the ADF available as early as March, 2002. Although these specifications were known in March, few market participants have familiarized themselves with these requirements. Some commenters criticized the ADF for not employing a FIX protocol. It should be noted that the FIX protocol is not commonly used by other markets at this time. (The NASD has indicated its willingness to develop a FIX interface to the ADF if justified by interest from market participants.)

Commenters also wrote at length about the NASD's proposal to allow ADF quoting participants in listed stocks to choose whether to participate in the Intermarket Trading System. Because the NASD's pilot program is limited to Nasdaq securities, these comments are not germane to the current filing.

Several commenters expressed concern about the commencement of ADF and the need for potential market participants to program and test with the ADF before quoting and trade reporting through the system. The Commission recognizes that, as with any other new system, potential ADF participants must code to the ADF and test their systems before they can begin using the ADF. The Commission notes that the approval of the ADF pilot program is not in itself a determination that the conditions precedent contained in the SuperMontage approval order have been satisfied.

A number of commenters also criticized the ADF as not offering a competitive alternative to Nasdaq because the NASD's fee levels were deemed excessive and because the NASD does not share market data revenues as do Nasdaq and certain other markets. In response, the NASD has proposed a set of fee waivers and discounts to make the ADF more attractive financially, and it intends to review its fees on an ongoing basis as it gains experience with the costs and revenues from operating the ADF. Although the NASD does not intend to share market data revenues, it does not believe that it need do so to offer a useful alternative quoting and trading venue.

The Commission believes that the concerns raised by commenters have been preliminarily addressed, and that the approval of the ADF Pilot will help the Commission evaluate these concerns more fully after practical experience with the ADF. Accordingly, the Commission finds that good cause exists, consistent with sections 15A(b)(11) of the Act,[34] and section 19(b)(2) of the Act [35] to accelerate approval of the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

Inc., dated February 15, 2002 (''NYSE Letter #1''); Letter from Robert G. Britz, President and Co-Chief Operating Officer, New York Stock Exchange, Inc., dated May 21, 2002 (''NYSE Letter #2''); Letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc., dated July 15, 2002 (''NYSE Letter #3''); Letter from Kevin M. Foley, Bloomberg Tradebook LLC, dated February 7, 2002 (''Bloomberg Letter #1''); Letter from Kevin M. Foley, Bloomberg Tradebook LLC, dated June 28, 2002 (''Bloomberg Letter #2''); Letter from Michael T. Dorsey, Senior Vice President, General Counsel, and Secretary, Knight Trading Group, Inc., dated February 6, 2002 (''Knight Letter''); Letter from William O'Brien, Senior Vice President & General Counsel, Brut, LLC, dated February 13, 2002 (''Brut Letter #1''); Letter from William O'Brien, Senior Vice President & General Counsel, Brut, LLC, dated March 20, 2002 (''Brut Letter #2''); Letter from Douglas M. Atkin, President and Chief Executive Officer, Instinet, dated February 13, 2002 (''Instinet Letter #1''); Letter from Jon Kroeper, First Vice President and Regulatory Policy/Strategy, Instinet, dated July 1, 2002 (''Instinet Letter #2''); Letter from Mark P. Barracca, Corporate Counsel, NexTrade, Inc., dated January 18, 2002 (''NexTrade Letter #1''); Letter from John M. Schaible, President, NexTrade, Inc., dated April 8, 2002 (''NexTrade Letter #2''); Letter from John M. Schaible, President, NexTrade, Inc., dated June 9, 2002 (''NexTrade Letter #3''); Letter from K. Richard B. Niehoff, Chairman, President, and CEO, WEBIXTRADER.COM, dated June 27, 2002 (''Webix Letter''); Letter from Amy Montague, dated June 21, 2002 (''Montague Letter''); Letter from William Joseph, dated June 25, 2002 (''Joseph Letter''); Letter from Jim Hendricks, dated February 21, 2002 (''Hendricks Letter''); Letter from Jim Ryan, dated June 20, 2002 (''Ryan Letter''); Letter from George A. Robles, dated June 15, 2002 (''Robles Letter''); Letter from Ira Rosenbloom, dated June 10, 2002 (''Rosenbloom Letter''); and Letter from John Tarleton, dated June 20, 2002 (''Tarleton Letter''). The Commission received four comment letters on SR–NASD–2002–28. *See* Letter from William O'Brien, Senior Vice President and General Counsel, Brut LLC, dated March 20, 2002 (''Brut Fee Letter''); Letter from Douglas M. Atkin, President, Chief Executive Officer, Instinet, dated April 1, 2002 (''Instinet Fee Letter''); Letter from Mark P. Barracca, Corporate Counsel, NexTrade, dated April 1, 2002 (''NexTrade Fee Letter''); and Letter from Kevin M. Foley, Bloomberg Tradebook LLC, dated April 2, 2002 (''Bloomberg Fee Letter'').

[28] *See e.g.* NexTrade Letters #1, 2, and 3; SIA Letter; Phlx Letter #2. The Commission also notes that some commenters were not very concerned with the lack of a linkage or execution facility. *See e.g.* Bloomberg Letter #1; BRUT Letter #1.

[29] *See e.g.* BRUT Letter #2; NexTrade Letters #1, 2, and 3; Bloomberg Letter #2; Instinet Letter #2.

[30] *See e.g.* NYSE Letters #1 and 2; Instinet Letter #1; Members Association of the American Stock Exchange Letter; Bloomberg Letter #2.

[31] *See e.g.* Instinet Letter; SIA Letter; Bloomberg Letter #2; Instinet Letter #2.

[32] *See e.g.* Brut Fee Letter; Instinet Fee Letter; NexTrade Fee Letter; Bloomberg Fee Letter.

[33] *See* Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406 (August 8, 2000) (File No. S7–16–00) (proposing rules regarding disclosure of order routing and execution practices).

[34] 15 U.S.C. 78o–3(b)(11).

[35] 15 U.S.C. 78s(b)(2).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change (File No. SR–NASD–2002–97) is approved on a pilot basis to expire at the close of daily operation of the ADF Pilot on April 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–19274 Filed 7–30–02; 8:45 am]

BILLING CODE 8010–01–P

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

Federal Register

Wednesday,

July 31, 2002

Part VII

Department of Education

Career Resource Network State Grants; Notice

DEPARTMENT OF EDUCATION

Career Resource Network State Grants

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of extension of project period and waiver, and reopening of competition for American Samoa.

SUMMARY: We waive the requirement in 34 CFR 75.261(c)(2) as it applies to projects funded under the Career Resource Network State Grants Program (CRN) in fiscal year (FY) 2000. We waive this requirement in order to be able to extend the project periods for 58 current grants awarded under the FY 2000 CRN competition.

We will also reopen the FY 2000 competition for the limited purpose of allowing American Samoa to submit an application for funding under the CRN.

DATES: This notice is effective July 31, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 4515, Mary E. Switzer Building, Washington, DC 20202–7242. Telephone (202) 205–9870.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this extension and waiver in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

On May 29, 2002 we published in the **Federal Register** (67 FR 37408) a notice proposing an extension of project period and waiver, and reopening of competition for American Samoa, in order to give early notice of—

(1) The possibility that additional years of funding may be available for current grantees through continuation awards; and

(2) Our intent to reopen the competition for American Samoa.

Public Comment

In the May 29th notice the Assistant Secretary invited comments on these proposals. We did not receive any comments.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule shall be published at least 30 days before its effective date, except as otherwise provided for good cause (20 U.S.C. 553(d)(3)). During the 30-day public comment period on this notice, no comments or objections were received on the proposed extension, waiver and limited reopening of the FY 2000 competition. For this reason, and in order to make timely continuation grants to the entities affected, the Secretary has determined that a delayed effective date is not required.

Background

On May 12, 2000 (65 FR 30798), we issued a notice inviting applications for new awards under the CRN for FY 2000. Among other things, the notice (a) explained that CRN grants are intended to provide support for the implementation of Statewide, systemic strategies for providing young people and adults with the critical career information resources and the skills they need to make effective educational and career decisions throughout their lives, (b) created a two-year project period, (c) established the deadline for the receipt of applications, and (d) clearly identified the eligible applicants, which include any of the 50 States, the Virgin Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Marianna Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

In the May 12th notice, we indicated that the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are not eligible for funding under the CRN after FY 2001 and, therefore, would not be eligible to receive funding under the CRN beyond FY 2001. However, following publication of the notice, Congress enacted H.R. 2436, the Guam Omnibus Opportunities Act, in which it extended the eligibility of these three entities beyond 2001, and until such time as they have fully completed the negotiations of their compacts of free association. Accordingly, since these three entities have not yet completed the negotiations process, they would continue to be eligible for funding under the CRN program in FY 2002, and perhaps beyond.

As also indicated in the May 12th notice, we expected to receive applications from each of the 59 eligible applicants. With the exception of American Samoa, every eligible State and outlying area applied for and received funding under the FY 2000 competition. American Samoa missed the deadline, but has indicated that it is interested in submitting an application and receiving funding in FY 2002. Based on the statute as written and the important services to be provided under the authority of section 118 of the Perkins Act, we believe that Congress intended for us to provide assistance under the CRN program to all eligible entities. We are, therefore, reopening the FY 2000 competition in order that American Samoa may apply for funding under the CRN.

If we held a new competition for FY 2002 and every current grantee, as well as American Samoa, applied for and received funding, all eligible applicants would be receiving support under the CRN in FY 2002. We believe, therefore, that it is in the best interest of the CRN for us to extend currently funded projects, allow American Samoa to apply for a grant, and review requests for continuation awards from the 58 current FY 2000 grantees, rather than hold a new competition in FY 2002. We believe that holding a new competition would create an unnecessary burden for current grantees since the 58 current grantees would have to undertake the effort and cost of submitting new applications for funding in FY 2002. A new competition would be likely only to cause existing grantees to expend valuable time and resources applying for program funding under the existing authority, while requesting continuation awards would be a more appropriate and effective means for current CRNs already under way to continue their projects under this program. In addition, pursuing a continuation grant process would also result in a more effective use of Federal funds.

Moreover, the Perkins Act, which includes authorization for the CRN, expires at the end of FY 2003. With the uncertainties presented by the absence of authorizing legislation for the CRN beyond FY 2003, it does not appear to be appropriate to hold a competition in FY 2003 for projects that would operate in FY 2004. We are generally reluctant to announce a competition in which eligible entities would be expected to prepare and submit applications while they are lacking critical information about the future of the program, and we do not think that it would be in the public interest to do so in this case.

Since we will have a limited purpose reopening of the FY 2000 competition so as to allow American Samoa to apply for CRN funding, the continuation of grants in lieu of a FY 2002 competition will not prevent the support of this last, and as yet unfunded, eligible entity under the CRN.

EDGAR Requirement

In order to provide for continuation awards, we waive the requirement in 34 CFR 75.261(c)(2), which establishes the conditions for extending a project period, including prohibiting the extension of a grantee's project period if it involves the obligation of additional Federal funds.

This extension and waiver will allow us to make continuation grants at least in FY 2002 and FY 2003 and perhaps beyond FY 2003 if Congress continues to appropriate funds for the CRN program under the current statutory authority. However, in accordance with 34 CFR 75.250, we do not hereby intend to make continuation grants beyond FY 2005.

A waiver will mean that: (1) Current CRN grants may be continued at least through FY 2004 (depending on the availability of appropriations for CRN in subsequent years under the current statutory authority), instead of ending in FY 2002, and (2) we will not announce a new competition or make new awards in FY 2002, as previously planned.

Continuation of the Current Grantees

With this extension and waiver of § 75.261(c)(2) of EDGAR, we extend the project periods of the 58 States and outlying areas that received grants under the FY 2000 competition for two years and for additional years for which Congress appropriates funds under the current statutory authority.

Decisions regarding annual continuation awards will be based on the program narratives, budgets and budget narratives, and Grant Performance Reports submitted by grantees, and on the regulations at 34 CFR 75.253. Consistent with 34 CFR 75.253, we will award continuation grants if we determine, among other things, and based on information provided by each grantee, that each grantee is making substantial progress performing grant activities. Under this extension and waiver, (1) the project period for grantees could be extended to July 19, 2004, and (2) additional continuation awards could be made for any additional fiscal year or years for which Congress appropriates funds under existing statutory authority.

We do not interpret this waiver as exempting current grantees from the account closing provisions of Pub. L. 101–510, or as extending the availability of FY 2001 funds awarded to current grantees. As a result of Pub. L. 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose.

Instructions for Requesting a Continuation Award

Under the applicable EDGAR provisions, each grantee wishing to receive an annual continuation grant shall submit a program narrative that describes the activities it intends to carry out during each of the two years (FYs 2002 and 2003), and during any additional years for which Congress appropriates funds under the current statutory authority, of a continuation award. The activities must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved application. (34 CFR 75.261(c)(3)). A grantee shall also submit a budget and budget narrative for each year it requests a continuation award. (34 CFR 75.118 and 75.253(c)(2)(i)). We suggest that states and outlying areas request their continuation awards at least three weeks before their current grants expire.

Amount of New Awards Under Continuation Grant

The actual amount of each continuation award depends on factors such as (1) the grantee's written statement describing how the funds made available under the continuation award will be used, (2) a cost analysis of the grantee's budget by the Department, and (3) whether any unobligated funds remaining from previous grant awards are needed to complete activities that are planned for completion in the prior budget period. (34 CFR 75.232 and 75.253(c)(2)(ii) and (3)).

The CRN has received an increase in its appropriation from FY 2001, which could result in States and outlying areas receiving a percentage increase in their awards. As a result of the increase in the appropriation, it is expected that States and outlying areas will receive a 4.39 percent increase in the amount of their current grants.

Although grantees must submit program narratives and budgets describing the activities they plan to carry out during each period of continuation, which could include some increase in funding, we strongly encourage all grantees to consider the 4.39 percent increase when deciding the amount of funds to request to support their continuation of projects.

American Samoa

American Samoa missed the deadline for the FY 2000 competition, but is interested in receiving funding in FY 2002. In order to provide an opportunity for American Samoa to submit an application under the CRN, we (1) reopen the competition and application notice published on May 12, 2000 (65 FR 30798) for this limited purpose, and (2) establish a new deadline date by which American Samoa will be required to submit its application. To be considered for funding, American Samoa must submit an application that meets the requirements established by the statute and the May 12, 2000 notice and is determined by the Department to have merit based on the criteria described in the May 12th notice. However, American Samoa is not required to follow the May 12th notice with regard to the *Deadline for Transmittal of Applications, Deadline for Intergovernmental Review, Estimated Average Size of Awards,* and *Project Period.* Instead, *American Samoa* should note the following:

Deadline for Transmittal of Application: August 30, 2002.

Deadline for Intergovernmental Review: October 29, 2002.

Estimated Range of Award: As with other awards under the FY 2000 competition, the size of American Samoa's award will depend on factors such as the scope and quality of the application and will be determined during pre-award clarification discussions with us. However, we strongly encourage American Samoa to consider the $85,732 estimated grant amount determined for American Samoa and published in the May 12th notice and the 4.39 percent increase in this notice, in determining the amount it requests for FY 2002.

Project Period: American Samoa's project period will be for FYs 2003 and 2004, and possibly for additional years for which Congress appropriates funds under the current statutory authority. Decisions regarding any continuation awards for American Samoa will be made in the same manner as decisions will be made for other CRN grantees under this notice.

Note: The Department is not bound by any estimates in this notice.

If You Have Questions About The Percentage Increase Your State Or Outlying Area May Receive Or About The Information You Must Submit In Order , To Request A Continuation Award, Or New Award In The Case Of American Samoa, Contact: Burt Carlson, U.S. Department of Education, 400 Maryland Avenue, SW., room 4331, Mary E. Switzer Building, Washington, DC 20202-7241. Telephone (202) 401–6225.

Paperwork Reduction Act of 1995

This extension and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed extension and waiver we requested comments on whether the proposed extension and waiver would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the notice of proposed extension and waiver and our own review, we have determined that this final notice of extension and waiver does not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.346 Career Resource Network State Grants)

Program Authority: 20 U.S.C. 2328.

Dated: July 24, 2002.

Hans Meeder,

Acting Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 02–19352 Filed 7–30–02; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 67, No. 147

Wednesday, July 31, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–3447**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.nara.gov/fedreg**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JULY

44015–44348	1
44349–44522	2
44523–44756	3
44757–45048	5
45049–45292	8
45293–45626	9
45627–45894	10
45895–46092	11
46093–46368	12
46369–46576	15
46577–46836	16
46837–47242	17
47243–47436	18
47437–47678	19
47679–48014	22
48015–48352	23
48353–48518	24
48519–48740	25
48741–48970	26
48971–49216	29
49217–49556	30
49557–49854	31

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7529 (See 7576)...45285
7575...44755
7576...45285
7577...47677
7578...49551
7579...49555
7580...49557
7581...49559

Executive Orders:

13021 (Revoked by 13270)...45288
13129 (See EO 13268)...44751
13224 (Amended by EO 13268)...44751
13268...44751
13269...45287
13270...45288
13271...46091

Administrative Orders:

Memorandums:
Memorandum of July 2, 2002...46575
Memorandum of July 23, 2002...48741
Presidential Determinations:
No. 99-6 of November 30, 1998 (See Presidential Determination No. 02-25)...47437
No. 02–24 of June 28, 2002...46837
No. 02-25 of July 9, 2002...47437

5 CFR

532...46839
1605...49524
1620...49524
1651...49524
1655...49524
3101...46840

7 CFR

58...48971
226...47891
301...44523
352...46577
354...48519
457...46093
636...48353
762...44015
905...48015
982...45049
989...47439
1033...48743
1200...44349
1209...46578
1520...45895, 48252

Proposed Rules:

27...48050
56...48816
70...48816
300...45922
319...45922
800...44571
911...48577
922...44095
945...48051
956...47741
980...48051
993...46423
1230...47474
1470...47477
1724...44396
1726...44396
1755...44396

8 CFR

2...48354
204...49561
214...44344
245...49561
299...49561

Proposed Rules:

103...45402, 48818
212...45402
245...45402

9 CFR

50...48745
94...44016, 44524, 45896, 47243
97...48519
130...48519
93...44097

10 CFR

72...46369
431...45018, 45028

Proposed Rules:

72...47745
170...44573, 49623
171...44573
710...46912
711...46912
712...46912

11 CFR

100...49064
102...49064
104...49064
106...49064
108...49064
110...49064
114...49064
300...49064
9034...49064

12 CFR

25...46842

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 31, 2002

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
Recall information; sharing with State and other Federal agencies; published 4-24-02

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Salmon; correction; published 7-1-02

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Utah; published 7-1-02

Hazardous waste program authorizations:
Michigan; published 7-31-02

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Federal-State Joint Board on Universal Service—
Rural high-cost universal service; Multi-Association Group plan; published 7-1-02

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
Hospital inpatient rehabilitation facilities prospective payment system; correction; published 7-1-02

JUSTICE DEPARTMENT

Drug Enforcement Administration

Practice and procedure:
Chemical import/export declarations, tableting and encapsulating machines importation or exportation reports, etc.; filing address change; published 7-31-02

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
Alien workers; immigrant petition and permanent residency registration; concurrent filings; published 7-31-02

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
Florida; published 7-3-02

Ports and waterways safety:
Milwaukee Captain of Port Zone, Lake Michigan, WI; security zones; published 7-31-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Boeing; published 6-26-02
Bombardier; published 6-26-02
McDonnell Douglas; published 6-26-02
Pratt & Whitney; published 6-26-02

Airworthiness standards:
Special conditions—
Airbus Model A340-500 and 600 series airplanes; published 7-1-02

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeepng reqirements:
Bank Secrecy Act; implementation—
Suspicious transactions; brokers and dealers reporting requirements; published 7-1-02

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:
Children of women Vietnam veterans—
Monerary allowance payment for covered birth defects and identification of covered birth defects; published 7-31-02
Duty periods; inactive duty for training; published 7-31-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Lamb promotion, research, and information order; comments due by 8-6-02; published 6-7-02 [FR 02-14457]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classfications; comments due by 8-5-02; published 6-6-02 [FR 02-14197]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
Findings on petitions, etc.—
Loggerhead turtle; comments due by 8-5-02; published 6-4-02 [FR 02-13959]

Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands and Gulf of Alaska groundfish; Steller sea lion protection measures; correction; comments due by 8-9-02; published 7-10-02 [FR 02-17045]
Gulf of Mexico stone crab; comments due by 8-9-02; published 6-25-02 [FR 02-15995]
Magunuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permit applications; comments due by 8-5-02; published 7-19-02 [FR 02-18265]
Northeastern United States fisheries—
Atlanctic mackerel, squid, and butterfish; comments due by 8-5-02; published 7-5-02 [FR 02-16813]
West Coast States and Western Pacific fisheries—
Pacific whiting; comments due by 8-5-02; published 7-19-02 [FR 02-18262]

DEFENSE DEPARTMENT

Air Force Department

Privacy Act; implementation; comments due by 8-5-02; published 6-4-02 [FR 02-13900]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
Federal, State, and local taxes; comments due by 8-5-02; published 6-4-02 [FR 02-13867]

Privacy Act; implementation
National Imagery and Mapping Agency; comments due by 8-5-02; published 6-4-02 [FR 02-13898]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
Chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks; comments due by 8-5-02; published 6-5-02 [FR 02-13805]

Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-7-02; published 7-8-02 [FR 02-16857]
South Dakota; comments due by 8-9-02; published 7-10-02 [FR 02-17358]

Air quality planning purposes; designation of areas:
Michigan; comments due by 8-9-02; published 7-10-02 [FR 02-17239]
Minnesota; comments due by 8-9-02; published 7-10-02 [FR 02-17242]

Hazardous waste:
Municipal solid waste landfills; research, development, and demonstration permits; comments due by 8-9-02; published 6-10-02 [FR 02-14489]

Superfund program:
CERCLA hazardous substances list; additions and removals—
Typographical errors correction and removal of obsolete language; comments due by 8-8-02; published 7-9-02 [FR 02-16866]
CERLA hazardous substances list; additions and removals—

Correction of typographical errors and removal of obsolete language in regulations on reportable quantities; comments due by 8-8-02; published 7-9-02 [FR 02-16873]

Water pollution control:

National Pollutant Discharge Elimination System—

Cooling water intake structures at Phase II existing facilities; requirements; comments due by 8-7-02; published 6-19-02 [FR 02-15456]

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

Texas; comments due by 8-5-02; published 6-18-02 [FR 02-15212]

Radio stations; table of assignments:

Indiana; comments due by 8-5-02; published 6-21-02 [FR 02-15673]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Federal, State, and local taxes; comments due by 8-5-02; published 6-4-02 [FR 02-13867]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Food contact substance notification system; comments due by 8-5-02; published 5-21-02 [FR 02-12662]

Human drugs:

Pediculicide products (OTC); amendment of final monograph; comments due by 8-8-02; published 5-10-02 [FR 02-11656]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:

Indian housing block grant allocation formula; negotiated rulemaking committee; intent to establish; comments due by 8-5-02; published 7-5-02 [FR 02-16766]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Otay tarplant; comments due by 8-9-02; published 7-10-02 [FR 02-17344]

Migratory bird hunting:

Federal Indian reservations, off-reservation trust lands, and ceded lands; comments due by 8-8-02; published 7-29-02 [FR 02-19018]

INTERIOR DEPARTMENT

Reclamation Bureau

Reclamation lands and projects:

Law enforcement authority; comments due by 8-5-02; published 6-4-02 [FR 02-13877]

INTERNATIONAL TRADE COMMISSION

Practice and procedure:

General application rules, safeguard investigations, and antidumping and countervailing duty investigations and reviews; technical corrections, etc.; comments due by 8-5-02; published 6-5-02 [FR 02-13910]

LABOR DEPARTMENT

Programs and activities receiving Federal financial assistance; nondiscrimination based on age; comments due by 8-9-02; published 6-10-02 [FR 02-14458]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

Shipment by Government Bills of Lading; comments due by 8-5-02; published 6-6-02 [FR 02-14161]

Federal Acquisition Regulation (FAR):

Federal, State, and local taxes; comments due by 8-5-02; published 6-4-02 [FR 02-13867]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Prompt corrective action—

Revisions and adjustments; comments due by 8-5-02; published 6-4-02 [FR 02-13931]

TRANSPORTATION DEPARTMENT

Coast Guard

Pollution:

Salvage and marine firefighting requirements; tank vessels carrying oil; response plans; comments due by 8-8-02; published 5-10-02 [FR 02-11376]

Ports and waterways safety:

Narragansett Bay, Providence and Taunton Rivers, RI; safety and security zones; comments due by 8-5-02; published 6-20-02 [FR 02-15610]

Ponce Bay, Tallaboa Bay, and Guayanilla Bay, PR and Limetree Bay, St. Croix, Virgin Islands; safety zones; comments due by 8-5-02; published 6-4-02 [FR 02-13969]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Reduced vertical separation minimum in domestic United States airspace; comments due by 8-8-02; published 5-10-02 [FR 02-11704]

Airworthiness directives:

Boeing; comments due by 8-5-02; published 6-19-02 [FR 02-15368]

Britax Sell Gmbh & Co.; comments due by 8-6-02; published 6-7-02 [FR 02-14252]

Eurocopter France; comments due by 8-6-02; published 6-7-02 [FR 02-14250]

Gulfstream Aerospace LP; comments due by 8-8-02; published 7-9-02 [FR 02-17080]

McDonnell Douglas; comments due by 8-6-02; published 7-17-02 [FR 02-18025]

Pratt & Whitney; comments due by 8-9-02; published 6-10-02 [FR 02-14251]

Rolls-Royce plc; comments due by 8-5-02; published 6-6-02 [FR 02-13885]

Sikorsky; comments due by 8-6-02; published 6-7-02 [FR 02-14249]

Airworthiness standards:

Special conditions—

Boeing Model 737-79U IGW (BBJ Serial Number 29441) airplane; comments due by 8-9-02; published 7-10-02 [FR 02-17375]

Class E airspace; comments due by 8-6-02; published 6-13-02 [FR 02-14985]

TREASURY DEPARTMENT

Customs Service

Merchandise entry and merchandise examination, sampling, and testing:

Food, drugs, devices, and cosmetics; conditional release period and customs bond obligations; comments due by 8-6-02; published 6-7-02 [FR 02-14286]

Trademarks, trade names, and copyrights:

Merchandise bearing counterfeit mark; civil fines for importation; comments due by 8-6-02; published 6-7-02 [FR 02-14287]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Eligible deferred compensation plans; compensation deferred; comments due by 8-6-02; published 5-8-02 [FR 02-11036]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 2362/P.L. 107–202

Benjamin Franklin Tercentenary Commission Act (July 24, 2002; 116 Stat. 739)

H.R. 3971/P.L. 107–203

To provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover. (July 24, 2002; 116 Stat. 744)

Last List July 25, 2002

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.